UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

In re ALTA MESA RESOURCES, INC.	§	Civil Action No. 4:19-cv-00957
SECURITIES LITIGATION	§ §	CLASS ACTION
This Document Relates To:		Hon. George C. Hanks, Jr.
ALL ACTIONS.	§ §	
	8	

LEAD PLAINTIFFS' SECOND SUPPLEMENTAL RESPONSES AND OBJECTIONS TO DEFENDANTS HPS AND DONALD DIMITRIEVICH'S FIRST INTERROGATORIES TO LEAD PLAINTIFFS

- AMR SDTX00054102;
- AMR SDTX00066023;
- AMR SDTX00069386;
- AMR SDTX00074340;
- AMR SDTX00676282;
- AMR_SDTX00854958;
- AMR SDTX00877330;
- AMR SDTX00903461;
- AMR SDTX00909369;
- AMR SDTX01117195;
- AMR SDTX01698027;
- AMR_SDTX01812220;
- ARMEnergy 00016419;
- ARMEnergy_00053779;
- ARMEnergy_00054470;
- ARMEnergy 00079522;
- RIVERSTONE SDTX00286077; and
- RIVERSTONE SDTX00320552.

Plaintiffs reserve their right to supplement their response seasonably pursuant to Rule 26(e).

<u>INTERROGATORY NO. 5</u>:

Identify each statement in the Complaint that You contend is a basis for a cause of action under Section 20(a) of the Exchange Act as against the Propounding Defendant.

RESPONSE TO INTERROGATORY NO. 5:

The misleading statements alleged by Lead Plaintiffs have already been identified and attributed with specificity to the appropriate Propounding Defendants in the Complaint, and are further identified in the Summary of Alleged Misstatements and the Chart of Alleged Misstatements. Accordingly, Lead Plaintiffs object to this Interrogatory as unduly burdensome and disproportional to the needs of the case.

Lead Plaintiffs' counsel are otherwise willing to meet and confer to discuss the information sought by the Propounding Defendants in this Interrogatory.

Subject to the General Objections and specific objections to Interrogatory No. 5 as set forth herein, Plaintiffs respond as follows: Plaintiffs allege that defendants HPS and Dimitrievich are each liable pursuant to Section 20(a) of the Exchange Act for all misleading statements contained in the January 19, 2018 Definitive Proxy. See ¶¶199, 201, 204, 206-207. Defendants HPS and Dimitrievich are also each liable pursuant to Section 20(a) of the Exchange Act for all misleading statements made by Alta Mesa (whether AMH or AMR) and its officers/directors from August 17, 2017 through November 14, 2018. See ¶¶190, 192, 194, 196, 209, 211, 213, 216, 219, 221-222, 224, 226-227, 229, 231, 233, 235, 237, 239, 241, 244-246, 248, 250, 252-254, 256.

Plaintiffs reserve their right to supplement their response seasonably pursuant to Rule 26(e).

INTERROGATORY NO. 6:

For each statement identified in response to Interrogatory No. 5, state all bases and facts that support Your contention that the Propounding Defendant had the power and/or ability to control the Person(s) who made the statement.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

IN RE ALTA MESA RESOURCES, INC. SECURITIES LITIGATION

Case No. 4:19-cv-00957

Judge George C. Hanks, Jr.

WILLIAM MCMULLEN'S OBJECTIONS AND RESPONSES TO CLASS PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSIONS

Pursuant to Rule 26 and Rule 36 of the Federal Rules of Civil Procedure, William McMullen ("McMullen"), makes the following objections and responses to FNY Partners Fund LP, FNY Managed Accounts, LLC, Paul J. Burbach, United Association National Pension Fund (f/k/a Plumbers and Pipefitters National Pension Fund) and Camelot Event Driven Fund's (collectively, "Class Plaintiffs" or "Plaintiffs") First Set of Requests for Admission (the "Requests" and individually, a "Request"). Each response to a particular Request is made subject to the objections and conditions within that response, as well as the General Objections, Objections to Definitions, and Objections to Instructions.

GENERAL OBJECTIONS

The following General Objections apply to each Definition, Instruction, and Request, and shall have the same force and effect as if fully set forth in the response to each Request. These limitations and objections, which are part of McMullen's response to each Request, are set forth herein to avoid the duplication of restating them for each individual response. While McMullen may refer to certain General Objections in its Specific Objections for the purposes of emphasis and clarity, failure to restate any General Objection is not a waiver of any General Objection.

REQUEST FOR ADMISSION NO. 3:

Admit You acted on BCE's behalf with respect to all actions you took in your capacity as an AMR board member

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

Bayou City objects to this Request as vague and ambiguous as to the meaning of the phrase "acted on BCE's behalf." Subject to this objection, denied.

REQUEST FOR ADMISSION NO. 4:

Admit You acted on BCE's behalf with respect to at least one action you took in your capacity as an AMH board member.

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

Bayou City objects to this Request as vague and ambiguous as to the meaning of the phrase "acted on BCE's behalf." Subject to this objection, denied.

REQUEST FOR ADMISSION NO. 5:

Admit You acted on BCE's behalf with respect to all actions you took in your capacity as an AMH board member.

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Bayou City objects to this Request as vague and ambiguous as to the meaning of the phrase "acted on BCE's behalf." Subject to this objection, denied.

REQUEST FOR ADMISSION NO. 6:

Admit You signed Alta Mesa's March 29, 2018 Annual Report (SEC Form 10-K) for 2017.

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

Admitted.

REDACTED IN ITS ENTIRETY

REDACTED IN ITS ENTIRETY

REDACTED IN ITS ENTIRETY

10-Q 1 amr-20180331x10q.htm 10-Q **Table of Contents**

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 10-Q

(M	OFF	1 10	10

☑ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended: March 31, 2018

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE **ACT OF 1934**

> For the transition period from to

Commission file number: 001-38040

ALTA MESA RESOURCES, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization) 81-4433840

(I.R.S. Employer Identification No.)

15021 Katy Freeway, Suite 400, Houston, Texas (Address of principal executive offices)

77094

(Zip Code)

Registrant's telephone number, including area code: 281-530-0991									
Indicate by check man the Securities Exchang was required to file su days. Yes \(\sqrt{N} \) No [ge Act	t of 1934 duri	ng the pre	cedin	g 12 months (or for	r such	shorter period th	hat the registrant	<u>.</u>
Indicate by check mar any, every Interactive (§232.405 of this chap to submit and post suc	Data l ter) d	File required turing the prec	to be submeding 12 i	nitted	and posted pursua	nt to R	ule 405 of Regu	lation S-T	
Indicate by check mar a smaller reporting con filer," "smaller reportione)	mpany	y or an emerg	ing growtl	ı com	pany. See definition	n of "l	large accelerated	l filer," "accelera	
Large accelerated filer		Accelerated file	er		Non-accelerated filer	\boxtimes	(Do not check company)	if smaller reportin	g
Smaller reporting company		Emerging company	growth	\boxtimes					
If an emerging growth transition period for co		•	•		_				n
13(a) of the Exchange	Act.								

Case 4:19-cv-00957	Document 462-9	Filed on 09/28/23 in TXSD	Page 17 of 113					
Indicate by check mark whether Act). Yes □ No ☒	r the registrant is a shell	company (as defined in Rule 12b-2 of	the Exchange					
As of April 30, 2018, there were 170,931,140 shares of Class A Common Stock and 213,402,398 shares of Class C Common Stock, par value \$0.0001 per share outstanding.								
		1						

Case 4:19-cv-00957 Document 462-9 Filed on 09/28/23 in TXSD Page 19 of 113 Table of Contents

Factors affecting oil prices include worldwide economic conditions; geopolitical activities in various regions of the world; worldwide supply and demand conditions; weather conditions; actions taken by the Organization of Petroleum Exporting Countries; and the value of the U.S. dollar in international currency markets. Commodity prices remain unpredictable and it is uncertain whether the increase in market prices experienced in recent months will be sustained. As a result, we cannot accurately predict future commodity prices and, therefore, cannot determine with any degree of certainty what effect increases or decreases in these prices will have on our capital expenditures, production volumes or revenues. In the event that oil, natural gas and natural gas liquids prices significantly decrease, such decrease could have a material adverse effect on our financial condition, the carrying value of our oil and natural gas properties, goodwill and intangible assets, our proved reserves and our ability to finance operations, including the amount of Alta Mesa's borrowing base under its senior secured revolving credit facility. The following table sets forth the average New York Mercantile Exchange ("NYMEX") prices for oil and natural gas for the three months ended March 31, 2018 and 2017:

		Three Months Ended											
		2018					March 31,						
	-	Jan-18		Feb-18]	Mar-18		2018		2017	C	hange	%
Average NYMEX daily prices:							_						
Oil (per bbl)	\$	63.55	\$	62.16	\$	62.77	\$	62.86	\$	51.78	\$	11.08	21%
Natural gas (per MMBtu)		3.15		2.66		2.70		2.85		3.06		(0.21)	(7)%

Our 2018 anticipated non-acquisition capital expenditures for our E&P segment ranges between \$500 million and \$580 million. Our 2018 anticipated non-acquisition capital expenditures for our Midstream segment ranges between \$175 million and \$220 million. We are currently utilizing eight drilling rigs as of May 2018, which will result in drilling between 170 and 180 gross wells in the STACK. Following the closing of the Business Combination, we have allocated our 2018 capital expenditures to develop the STACK for Alta Mesa and to expand capacity and well connects for Kingfisher.

Our derivative contracts are reported at fair value on our consolidated balance sheets and are sensitive to changes in the price of oil, natural gas and natural gas liquids. Changes in these derivative assets and liabilities are reported in our consolidated statements of operations as gain (loss) on derivative contracts, which include both the non-cash increase and decrease in the fair value of derivative contracts, as well as the effect of cash settlements of derivative contracts during the period. We recognized a net loss on our derivative contracts of \$22.6 million in the Successor Period, which includes \$4.6 million in cash settlements received for derivative contracts. The objective of our hedging program is that, over time, the combination of settlement gains and losses from derivative contracts with ordinary oil and natural gas revenues will produce relative revenue stability. However, in the short term, both settlements and fair value changes in our derivative contracts can significantly impact our results of operations, and we expect these gains and losses to continue to reflect changes in oil and natural gas prices.

The primary factors affecting our production levels are capital availability, the effectiveness and efficiency of our production operations, the success of our drilling program and our inventory of drilling prospects. In addition, we face the challenge of natural production declines. We attempt to overcome this natural decline primarily through development of our existing undeveloped reserves, enhanced completions and well recompletions, and other enhanced recovery methods. Our future growth will depend on our ability to continue to add reserves in excess of production. Our ability to add reserves through drilling and other development techniques is dependent on our capital resources and can be limited by many factors, including our ability to timely obtain drilling permits and regulatory approvals. Any delays in drilling, completing or connecting our new wells to gathering lines will negatively affect our production, which will have an adverse effect on our revenues and, as a result, cash flow from operations

Operations Update

STACK, Oklahoma. Our STACK properties consist largely of contiguous leased acreage primarily in Kingfisher County, Oklahoma, which is the eastern portion of the Anadarko Basin referred to as the STACK, an acronym describing both its location and the multiple, stacked pay zones present in the area. This continuously growing position is characterized by multiple productive zones located at total vertical depths between 4,000 feet and 8,000 feet. The legacy operations within our acreage are primarily shallow-decline, long-lived oil fields developed on 80-acre vertical well spacing associated with waterfloods in the Oswego, Big Lime and Manning Limestones. We continue to maintain production in these historical field pay zones.

Case 4:19-cv-00957 Document 462-9 Filed on 09/28/23 in TXSD Page 20 of 113

In the first quarter of 2018, we brought 28 operated horizontal wells on production of which approximately 13 were funded through our joint development agreement with BCE. We had 22 operated horizontal wells in progress as of the end of the first quarter of 2018, of which two were funded through our joint development agreement with BCE. As of May 2018, 18 of the 22 operated horizontal wells in progress as of March 31, 2018 were on production.

Case 4:19-cv-00957 Document 462-9 Filed on 09/28/23 in TXSD Page 22 of 113 Table of Contents

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

ALTA MESA RESOURCES, INC.

(Registrant)

May 21, 2018

By: /s/ Harlan H. Chappelle Harlan H. Chappelle

Chief Executive Officer

May 21, 2018

By: /s/ Michael A. McCabe Michael A. McCabe

Chief Financial Officer

66

Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports

Frequently Asked Questions (revised September 24, 20071)

The answers to these frequently asked questions represent the views of the staffs of the Office of the Chief Accountant and the Division of Corporation Finance. They are not rules, regulations or statements of the Securities and Exchange Commission. Further, the Commission has neither approved nor disapproved them.

Note: The Commission adopted Interpretive Guidance for Management on May 23, 2007 (Release No. 33-8810). The Commission has stated that an evaluation that is conducted in accordance with the Commission's Interpretive Guidance will satisfy the evaluation required by Exchange Act Rules 13a-15(c) and 15d-15(c). Additionally, the Commission had previously adopted rules on *Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports* (Release No. 34-47986, June 5, 2003). Since the adoption of the Commission's rules in June 2003, we have received questions regarding the implementation and interpretation of the rules. The Commission staff continues to entertain these questions, and where appropriate, will continue to answer publicly the more frequently asked questions.

Questions on accounting matters related to management's report on internal control over financial reporting should be directed to Josh K. Jones, Professional Accounting Fellow, in the Office of the Chief Accountant, Mail Stop 7561, 100 F Street, NE, Washington, DC 20549; telephone: (202) 551-5300. Other disclosure and filing questions should be directed to Sean Harrison at (202) 551-3430, or Jonathan Ingram at (202) 551-3500 in the Division of Corporation Finance.

Question 1

Q: Financial Accounting Standards Board (FASB) Interpretation No. 46 (revised December 2003), Consolidation of Variable Interest Entities — An Interpretation of ARB No. 51, requires that registrants apply that guidance and, if applicable, consolidate entities based on characteristics other than voting control no later than the period ending March 15, 2004, or December 15, 2004 for small business issuers. In instances where the registrant lacks the ability to dictate or modify the internal controls of an entity consolidated pursuant to Interpretation No. 46, it may not have legal or contractual rights or authority to assess the internal controls of the consolidated entity even though that entity's financial information is included in the registrant's financial statements. Similarly, for entities accounted for via proportionate consolidation in accordance with Emerging Issues Task Force Issue No. 00-1 (EITF 00-1), management may not have the ability to assess the internal controls. How should management's report on internal control over financial reporting address these situations?

A: We would typically expect management's report on internal control over financial reporting to include controls at all consolidated entities, irrespective of the basis for consolidation. However, in a situation where the entity was in existence prior to December 15, 2003 and is consolidated by virtue of Interpretation No. 46 (i.e., would not have been consolidated in the absence of application of that guidance) and where the registrant does not have the right or authority to assess the internal controls of the consolidated entity and also lacks the ability, in practice, to make that assessment, we believe management's report on internal control over financial reporting should provide disclosure in the body of its Form 10-K or 10-KSB regarding such entities. For example, a registrant could refer readers to a discussion of the scope of management's report on internal control over financial reporting in a section of the annual report entitled "Scope of Management's Report on Internal Control Over Financial Reporting." The registrant should disclose in the body of the Form 10-K or 10-KSB that it has not evaluated the internal controls of the entity and should also note that the registrant's conclusion regarding the effectiveness of its internal control over financial reporting does not extend to the internal controls of the entity. The registrant should also disclose any key sub-totals, such as total and net assets, revenues and net income that result from consolidation of entities whose internal controls have not been evaluated. The disclosure should note that the financial statements include the accounts of certain entities consolidated pursuant to FIN 46 or accounted for via proportionate consolidation in accordance with EITF 00-1 but that management has been unable to evaluate the effectiveness of internal control at those entities

due to the fact that the registrant does not have the ability to dictate or modify the controls of the entities and does not have the ability, in practice, to evaluate those controls.

Question 2

Q: Is a registrant required to evaluate the internal control over financial reporting of an equity method investment?

A: The accounts of an equity method investee are not consolidated on a line-by-line basis in the financial statements of the investor, and as such, controls over the recording of transactions into the investee's accounts are not part of the registrant's internal control structure. However, the registrant must have controls over the recording of amounts related to its investment that are recorded in the consolidated financial statements. Accordingly, a registrant would have to consider, among other things, the controls over: the selection of accounting methods for its investments, the recognition of equity method earnings and losses, its investment account balance, etc. For example, a registrant might require that, at least annually, its equity method investees provide audited financial statements as a control over the recognition of equity method earnings and losses. However, nothing precludes a registrant from evaluating the control over financial reporting of an equity method investment, and there may be circumstances where it is not only appropriate but also may be the most effective form of evaluation. For purposes of applying this guidance, we make no distinction between those equity method investments for which the registrant is required to file audited financial statements pursuant to Rule 3-09 of Regulation S-X and those where no such requirement is triggered.

Question 3

Q: If a registrant consummates a material purchase business² combination during its fiscal year, must the internal control over financial reporting of the acquired business be included in management's report on internal control over financial reporting for that fiscal year?

A: As discussed above, we would typically expect management's report on internal control over financial reporting to include controls at all consolidated entities. However, we acknowledge that it might not always be possible to conduct an assessment of an acquired business's internal control over financial reporting in the period between the consummation date and the date of management's assessment. In such instances, we would not object to management referring in the report to a discussion in the registrant's Form 10-K or 10-KSB regarding the scope of the assessment and to such disclosure noting that management excluded the acquired business from management's report on internal control over financial reporting. If such a reference is made, however, management must identify the acquired business excluded and indicate the significance of the acquired business to the registrant's consolidated financial statements. Notwithstanding management's exclusion of an acquired business's internal controls from its annual assessment, a registrant must disclose any material change to its internal control over financial reporting due to the acquisition pursuant to Exchange Act Rule 13a-15(d) or 15d-15(d), whichever applies (also refer to the last two sentences in the answer to question 7). In addition, the period in which management may omit an assessment of an acquired business's internal control over financial reporting from its assessment of the registrant's internal control may not extend beyond one year from the date of acquisition, nor may such assessment be omitted from more than one annual management report on internal control over financial reporting.

Question 4

Q: If management, the accountant, or both conclude in a report included in a timely filed Form 10-K or 10-KSB that the registrant's internal control over financial reporting is not effective, would the registrant still be considered timely and current for purposes of Rule 144 and Forms S-2, S-3, and S-8 eligibility?

A: Yes, as long as the registrant's other reporting obligations are timely satisfied. As has previously been the case, the auditor's report on the audit of the financial statements must be unqualified.

Question 5

Q: If management's report on internal control over financial reporting does not identify a material weakness but the accountant's attestation report does, or vice versa, does this constitute a disagreement between the registrant and the auditor that must be reported pursuant to Item 304 of Regulation S-K or S-B?

A: No, unless the situation results in a change in auditor that would require disclosure under Item 304 of Regulation S-K or S-B. However, such differences in identification of material weaknesses could trigger other disclosure obligations.

Question 6

Q: Is a registrant required to provide management's report on internal control over financial reporting, and the related auditor attestation report, when filing a transition report on Form 10-K or 10-KSB?

A: Yes. Because transition reports filed on Forms 10-K or 10-KSB (whether by rule or by election) must contain audited financial statements, they must also include management's report on internal control, subject to the transition provisions specified in Release No. 34-47986. The transition provisions relating to management's report on internal control should be applied to the *transition period* as if it were a fiscal year. Transition reports on Form 10-Q or 10-QSB are not required to include a management report on internal control.

Question 7

Q: Is a registrant required to disclose changes or improvements to controls made as a result of preparing for the registrant's first management report on internal control over financial reporting?

A: Generally we expect a registrant to make periodic improvements to internal controls and would welcome disclosure of all material changes to controls, whether or not made in advance of the compliance date of the rules under Section 404 of the Sarbanes-Oxley Act. However, we would not object if a registrant did not disclose changes made in preparation for the registrant's first management report on internal control over financial reporting. However, if the registrant were to identify a material weakness, it should carefully consider whether that fact should be disclosed, as well as changes made in response to the material weakness.

After the registrant's first management report on internal control over financial reporting, pursuant to Item 308 of Regulations S-K or S-B, the registrant is required to identify and disclose any material changes in the registrant's internal control over financial reporting in each quarterly and annual report. This would encompass disclosing a change (including an improvement) to internal control over financial reporting that was not necessarily in response to an identified material weakness (i.e. the implementation of a new information system) if it materially affected the registrant's internal control over financial reporting. Materiality, as with all materiality judgments in this area, would be determined upon the basis of the impact on internal control over financial reporting and the materiality standard articulated in TSC Industries, Inc. v. Northway, Inc. 426 U.S. 438 (1976) and Basic Inc. v. Levinson, 485 U.S. 224 (1988). This would also include disclosing a change to internal control over financial reporting related to a business combination for which the acquired entity that has been or will be excluded from an annual management report on internal control over financial reporting as contemplated in Question 3 above. As an alternative to ongoing disclosure for such changes in internal control over financial reporting, a registrant may choose to disclose all such changes to internal control over financial reporting in the annual report in which its assessment that encompasses the acquired business is included.

Question 8

Q: In many situations, a registrant relies on a third party service provider to perform certain functions where the outsourced activity affects the initiation, authorization, recording, processing or reporting of transactions in the registrant's financial statements, such as payroll. In assessing internal controls over financial reporting, management may rely on a Type 2 SAS 70 report³ performed by the auditors of the third party service providers. If the auditors of the third party service provider are the same as the auditors of the registrant, may management still rely on that report? Additionally, may management rely on a Type 2 SAS 70 report on the third party based on a different year-end?

A: In situations where management has outsourced certain functions to third party service provider(s), management maintains a responsibility to assess the controls over the outsourced operations. However, management would be able to rely on the Type 2 SAS 70 report even if the auditors for both companies were the same. On the other hand, if management were to engage the registrant's audit firm to also prepare the Type 2 SAS 70 report on the service organization, management would not be able to rely on that report for purposes of assessing internal control over financial reporting. Management would be able to rely on a Type 2 SAS 70 report on the service provider that is as of a different year-end. Note, however, that management is still responsible for maintaining and evaluating, as appropriate, controls over the flow of information to and from the service organization.

Question 9

Q: If a Form 10-K or Form 10-KSB is incorporated into a 1933 Securities Act filing, is a consent required related to the auditor's report on management's assessment of internal control over financial reporting?

A: Yes. Securities Act Rule 436 (17 CFR 230.436) requires filings under the 1933 Act to include a consent for all accountants' reports included or incorporated into that filing. This includes a consent for the auditor's report on management's assessment of internal control over financial reporting as well as the auditor's report on the financial statements. A new consent for the auditor's report on management's assessment of internal control over financial reporting is required in an amendment to the registration statement (a) whenever a change, other than typographical is made to the audited annual financial statements and (b) when facts are discovered that may impact the auditor's report on management's assessment of internal control over financial reporting.

Question 10

Q: Is an annual report to shareholders that meets the requirements of Exchange Act Rules 14a-3(b) or 14c-3(a) required to include management's report on internal control over financial reporting and the auditor's report on management's assessment of internal

9/21/23, 10:59 ANC ASE 4512 GOV MARGENTENT DREPORTENTATION OF THE GLANDAL REPORTED AND A REPORTED AND A REPORTED AND A REPORT OF THE THE REPORT OF THE REPORT OF THE REPORT OF THE REPORT OF THE REPOR

A: We believe that the intent of Section 404 of the Sarbanes-Oxley Act and the Commission's rules is that a registrant's audited financial statements with an accompanying audit report that are contained in or accompany a proxy statement or consent solicitation statement also be accompanied by management's report on internal control over financial reporting and the auditor's report on management's assessment of internal control over financial reporting. We encourage issuers to include both management's report on internal control over financial reporting and the auditor's report on management's assessment of internal control over financial reporting in the annual report to shareholders when their audited financial statements are included. If management states in their report that internal control over financial reporting is ineffective or the auditor's report takes any form other than an unqualified opinion and these reports are not included in the annual report to shareholders, our view is that an issuer would have to consider whether the annual report to shareholders contained a material omission that made the disclosures in the annual report misleading.

Question 11

Q: The Commission's rules implementing Section 404, announced in Release No. 34-47986, require management to perform an assessment of internal control over financial reporting which includes the "preparation of financial statements for external purposes in accordance with generally accepted accounting principles." Does management's assessment under the Commission's rule specifically require management to assess internal control over financial reporting of required supplementary information? Supplementary information includes the financial statement schedules required by Regulation S-X as well as any supplementary disclosures required by the FASB. One of the most common examples of such supplementary information is certain disclosures required by the FASB Standard No. 69, *Disclosures about Oil and Gas Producing Activities*.

A: Adequate internal controls over the preparation of supplementary information are required and therefore should be in place and assessed regularly by management. The Commission's rules in Release No. 34-47986 did not specifically address whether the supplementary information should be included in management's assessment of internal control over financial reporting under Section 404. A question has been raised as to whether the supplementary information included in the financial statements should be encompassed in the scope of management's report on their assessment of internal control over financial reporting.

The Commission staff is considering this question for possible rulemaking. Additionally, the Commission staff is evaluating broader issues relating to oil and gas disclosures and will include in its evaluation whether rulemaking in this area may be appropriate. Should there be any proposed changes to the current requirements in this area, they will be subject to the Commission's standard rulemaking procedures, including a public notice and comment period in advance of rulemaking. As a result, internal control over the preparation of this supplementary information need not be encompassed in management's assessment of internal control over financial reporting until such time that the Commission has completed its evaluation of this area and issues new rules addressing such requirements.

Until then, registrants are reminded that they must fulfill their responsibilities under current requirements including Section 13(b)(2) of the Exchange Act and Exchange Act Rules 13a-14, 13a-15, 15d-14, and 15d-15.

Question 12

Q: Should a foreign private issuer that files financial statements prepared in accordance with home country generally accepted accounting principles (GAAP) or IFRS, with a reconciliation to U.S. GAAP, plan and conduct its evaluation process based on the primary financial statements, or the amounts disclosed in the reconciliation to U.S. GAAP?

A: Management of foreign private issuers should plan and scope their evaluations based upon the primary financial statements (i.e. home country GAAP or IFRS). However, management's evaluation should consider controls related to the preparation of the U.S. GAAP reconciliation because the reconciliation is a required element of the financial statements.

Question 13

Q: In evaluating the severity of identified deficiencies, how should a foreign private issuer apply the reference to "interim financial statements" in the definition of material weakness?

A: Since home country requirements regarding the preparation of interim financial information vary significantly and there are no uniform requirements under the Exchange Act for foreign private issuers to file periodic interim financial information with the Commission, the reference to "interim financial statements" in that definition is not applicable to foreign private issuers. However, foreign private issuers filing on domestic forms are subject to the same requirements with respect to interim information as domestic issuers.

Question 14

Q: How should a registrant that is a foreign private issuer treat an entity that is accounted for differently in the primary financial statements (prepared in accordance with home country GAAP or IFRS) than in the reconciliation to U.S. GAAP (e.g. consolidated in

primary financial statements, but accounted for under the equity method in reconciliation to U.S. GAAP) for purposes of management's evaluation of the effectiveness of internal control over financial reporting?

A: As stated in Question 12 above, management should determine the scope of its evaluation based on the primary financial statements. Therefore, determinations as to how entities subject to these differences should be included in management's evaluation of the effectiveness of internal control over financial reporting should be based on how those entities are accounted for in the primary financial statements. However, as discussed in Question 12 above, management's evaluation should consider controls related to the preparation of the of the U.S. GAAP reconciliation.

Question 15

Q: Some foreign private issuers, based on their home country GAAP requirements, account for certain entities on a proportionate consolidation basis. How should those entities be treated for purposes of management's report on the effectiveness of internal control over financial reporting?

A: We would typically expect management's report on internal control over financial reporting to include all consolidated entities, even if those entities are consolidated on a proportionate basis.

However, there may be circumstances where the registrant does not have the right or authority to evaluate the internal controls of the entity consolidated on a proportionate basis, and also lacks the access necessary, in practice, to make that evaluation. In such circumstances, management should evaluate its controls over the recording of the amounts related to the proportionately consolidated entity recorded in the consolidated financial statements. Accordingly, if the foreign private issuer determines that the entity is within the scope of its assessment, the issuer would have to consider, among other things, the controls over the selection of accounting method for its investment and the recognition of the proportionate balances of the entity in the consolidated financial statements, including the proper elimination of intercompany balances and transactions. For example, a registrant might require that, at least annually, such entities provide audited financial statements as one of its controls over the recognition of proportionate balances in the consolidated financial statements.

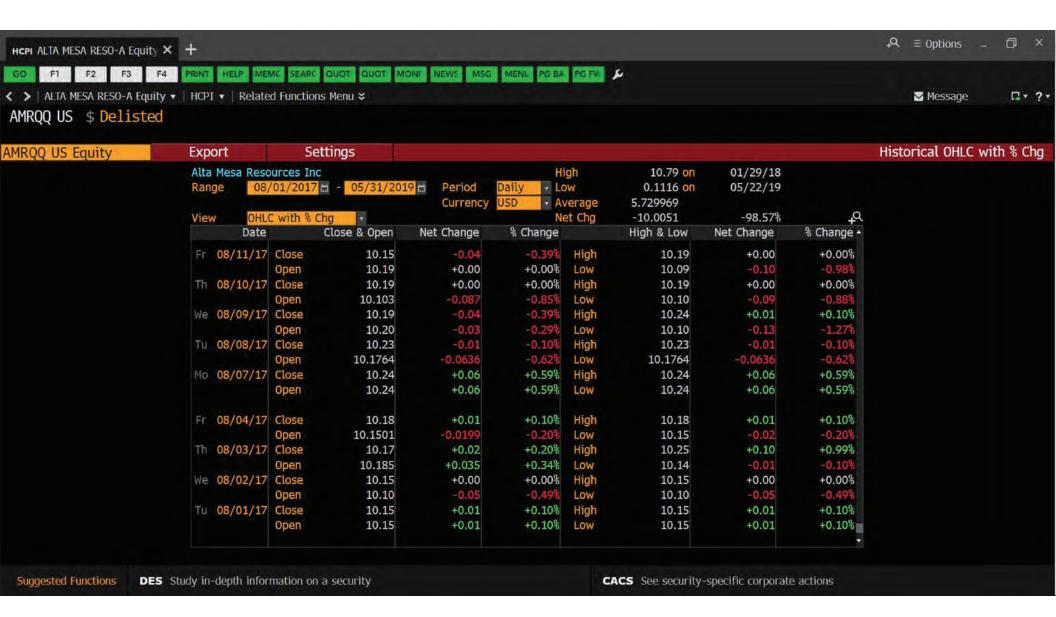
In these circumstances, we believe management's report on internal control over financial reporting should provide disclosure that it has not evaluated the internal controls of the applicable proportionately consolidated entity and should also note that the registrant's conclusion regarding the effectiveness of its internal control over financial reporting does not extend to the internal controls of such entities. The registrant should also disclose any key sub-totals, such as total and net assets, revenues and net income that result from the proportionate consolidation of entities whose internal controls have not been evaluated. Further, the disclosure should note that the financial statements include the accounts of certain entities accounted for via proportionate consolidation but that management has been unable to evaluate the effectiveness of internal control at those entities due to the fact that the registrant does not have the right or authority to evaluate the internal controls and does not have the access necessary, in practice, to evaluate those controls.

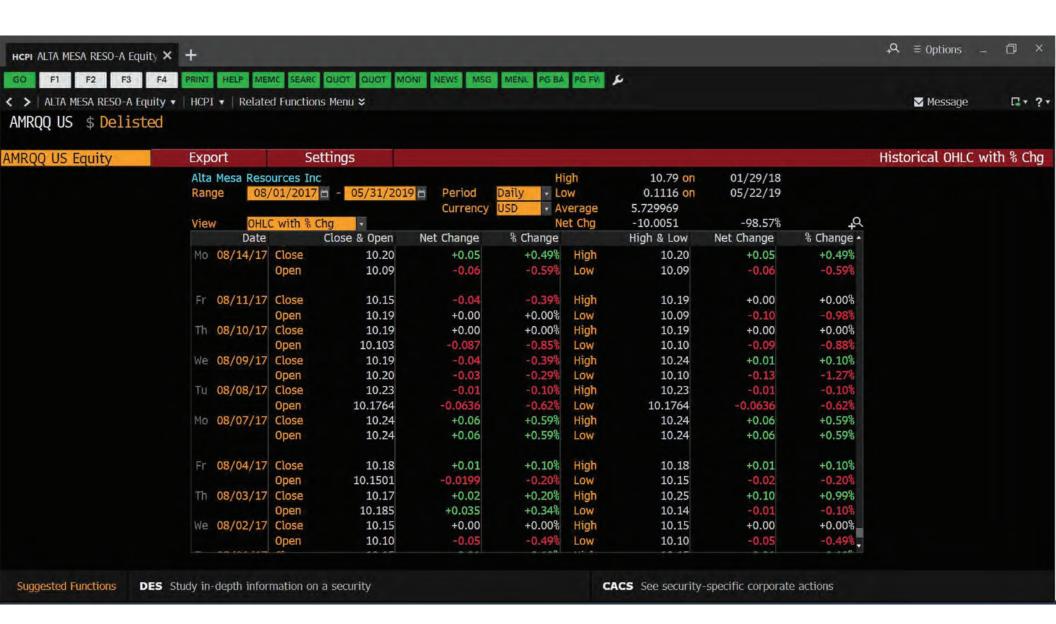
Endnotes

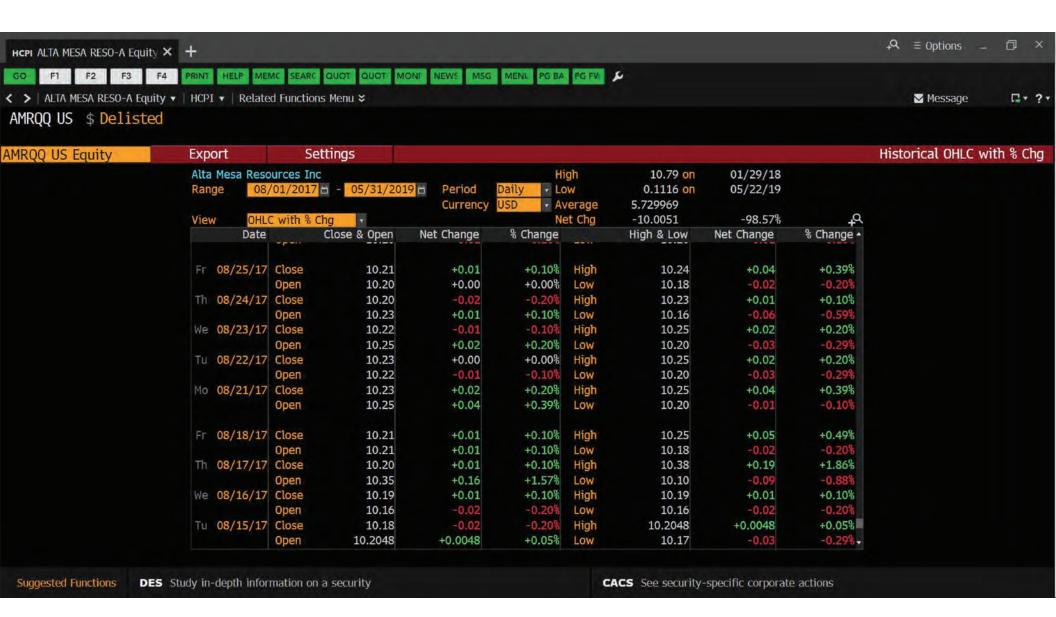
- ¹ On September 24, 2007, changes were made to eliminate frequently asked questions which the staff believed were no longer relevant, necessary, or were addressed by the Commission's issuance of Interpretive Guidance for Management on May 23, 2007 (Release No. 33-8810). These changes resulted in the elimination of previously existing frequently asked questions numbered 5, 7, 10 through 13, and 15 through 20. The remaining frequently asked questions are substantially the same and have been renumbered as a result of the elimination of the twelve previously referenced questions. Additionally, four new frequently asked questions have been added pertaining to foreign private issuers (see frequently asked questions numbered 12 through 15).
- ² The staff intends the term business to include those acquisitions that would constitute a business based upon the facts and circumstances as outlined in Article 11-01(d) of Regulation S-X. An acquisition may not meet the definition of a business in EITF 98-3, Determining Whether a Nonmonetary Transaction Involves Receipt of Productive Assets or of a Business, and would not be accounted for under SFAS No. 141, Business Combinations, but nevertheless may be a business under the definition in Article 11 used for SEC reporting purposes. This guidance applies irrespective of whether the acquisition is significant under Rule 1-02(w) of Regulation S-X.
- ³ AU sec 324 defines a report on controls placed in operation and test of operating effectiveness, commonly referred to as a "Type 2 SAS 70 report". This report is a service auditor's report on a service organization's description of the controls that may be relevant to a user organization's internal control as it relates to an audit of financial statements, on whether such controls were suitably designed to achieve specified control objectives, on whether they had been placed in operation as of a specific date, and on whether the controls that were tested were operating with sufficient effectiveness to provide reasonable, but not absolute, assurance that the related control objectives were achieved during the period specified.

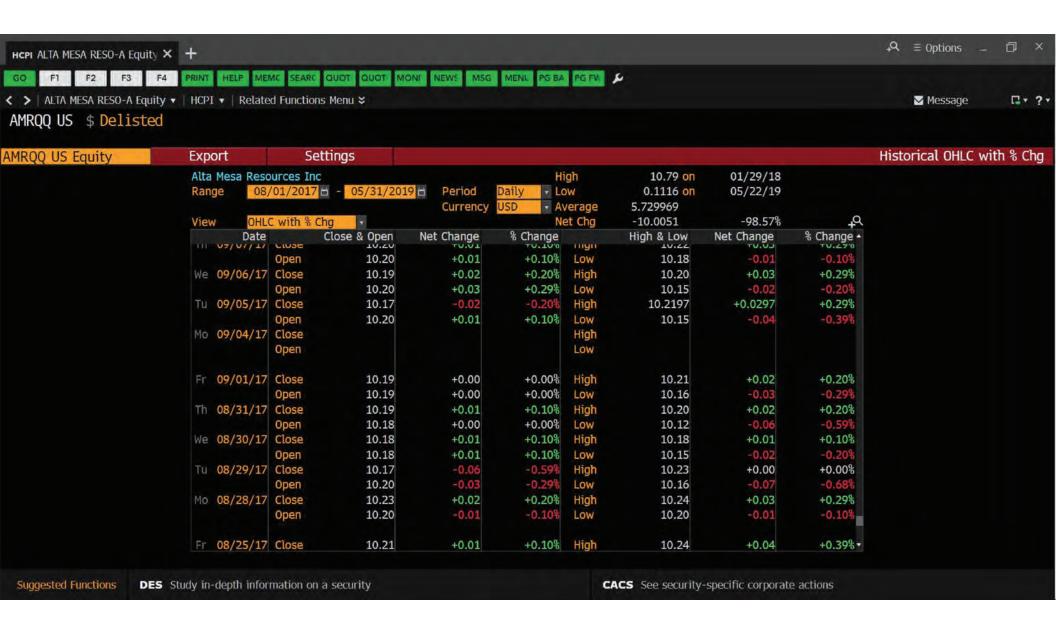
⁴ See also the requirement to provide similar disclosure in the financial statements for entities that are accounted for using proportionate consolidation pursuant to Item 17(c)(2)(vii) and Item 18(a) of Form 20-F.

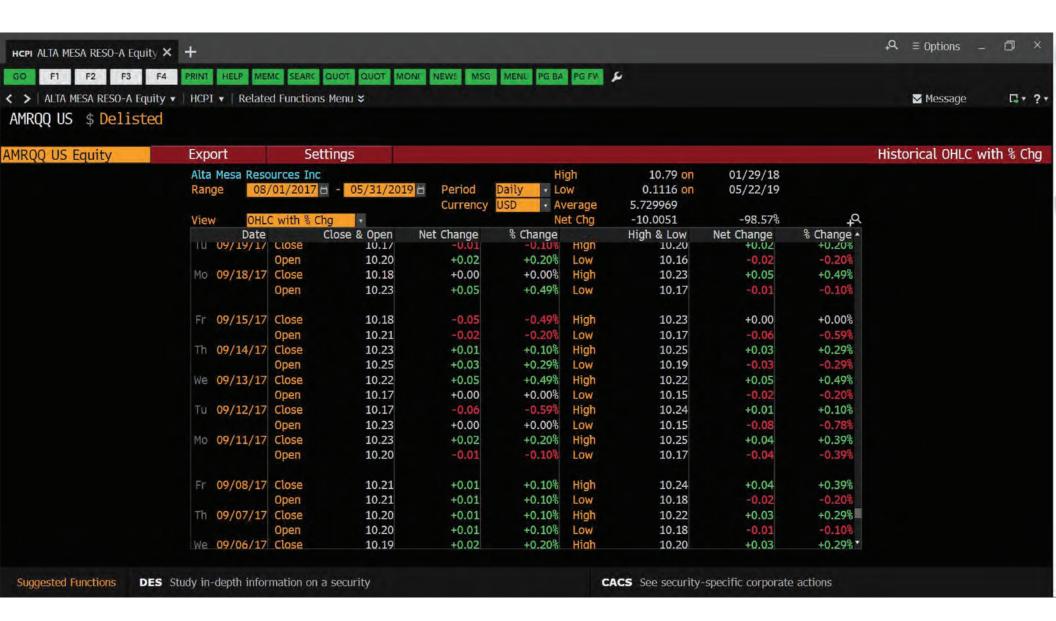
Modified: Sept. 24, 2007

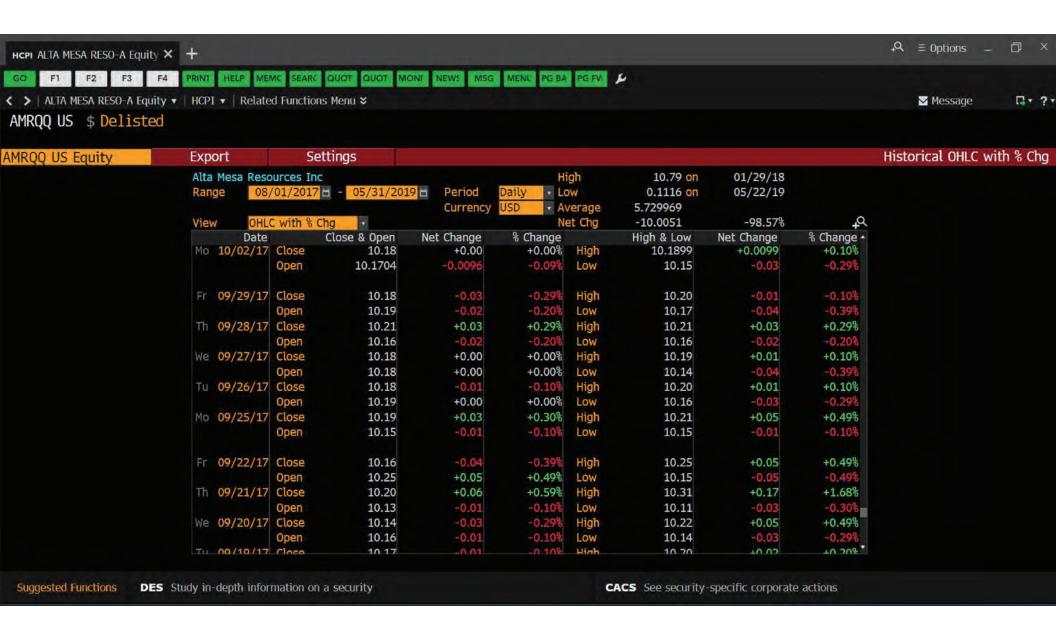


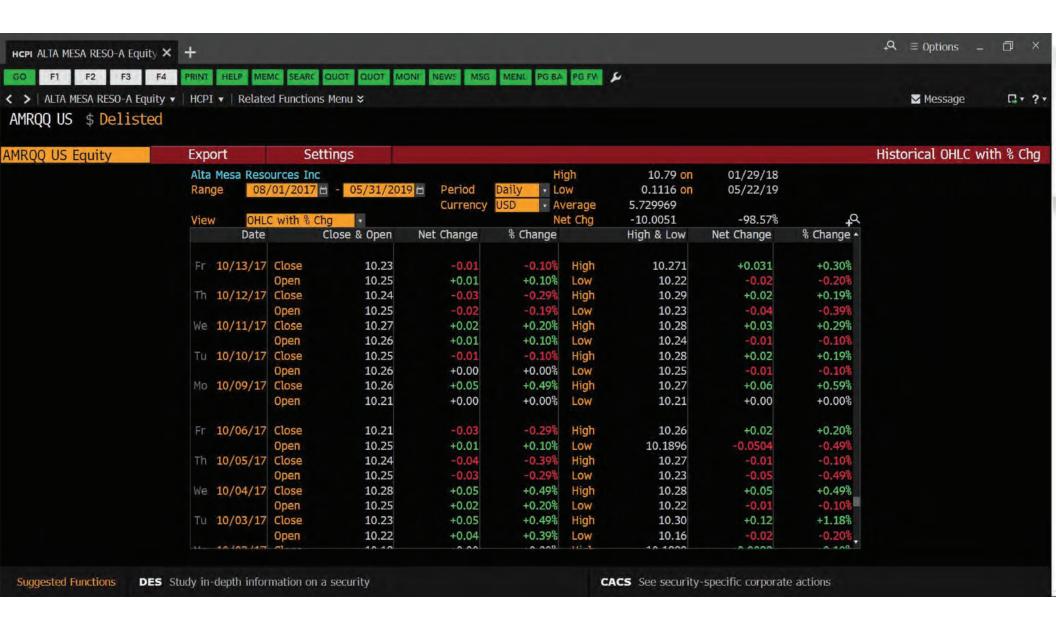


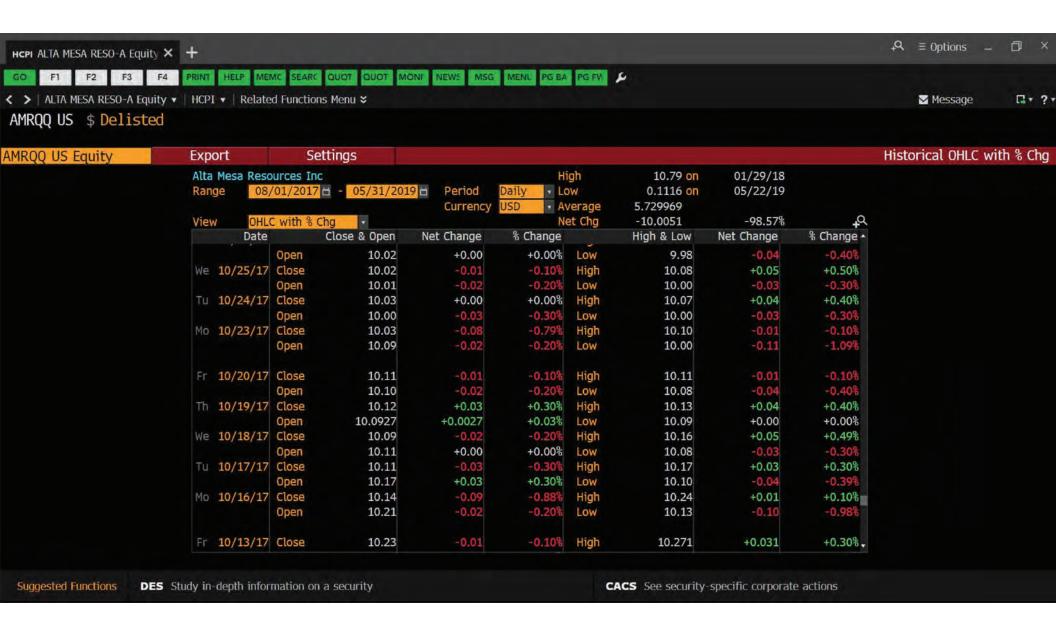


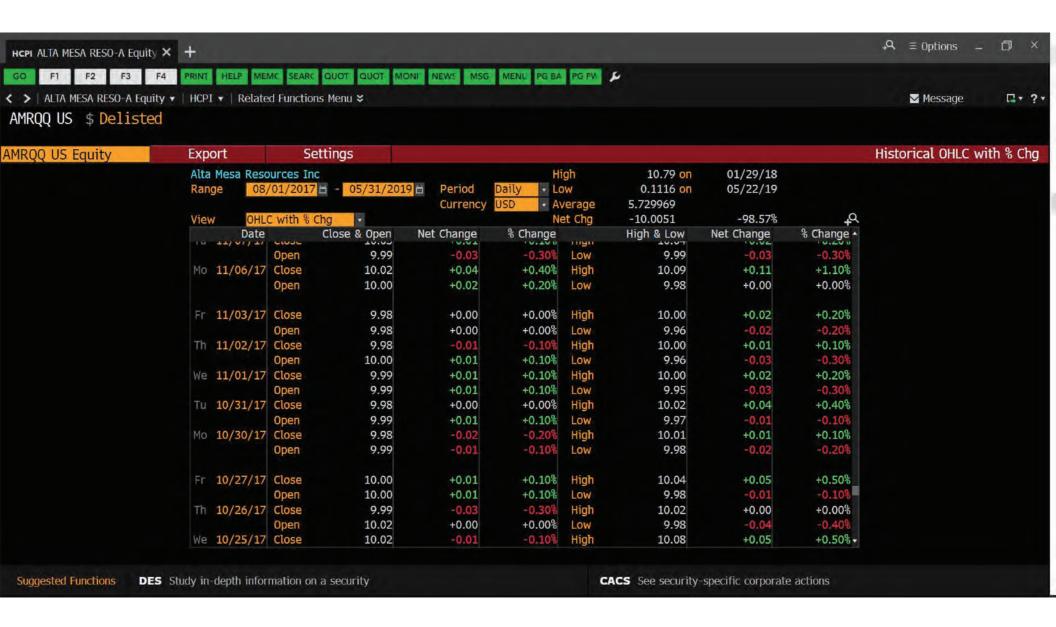


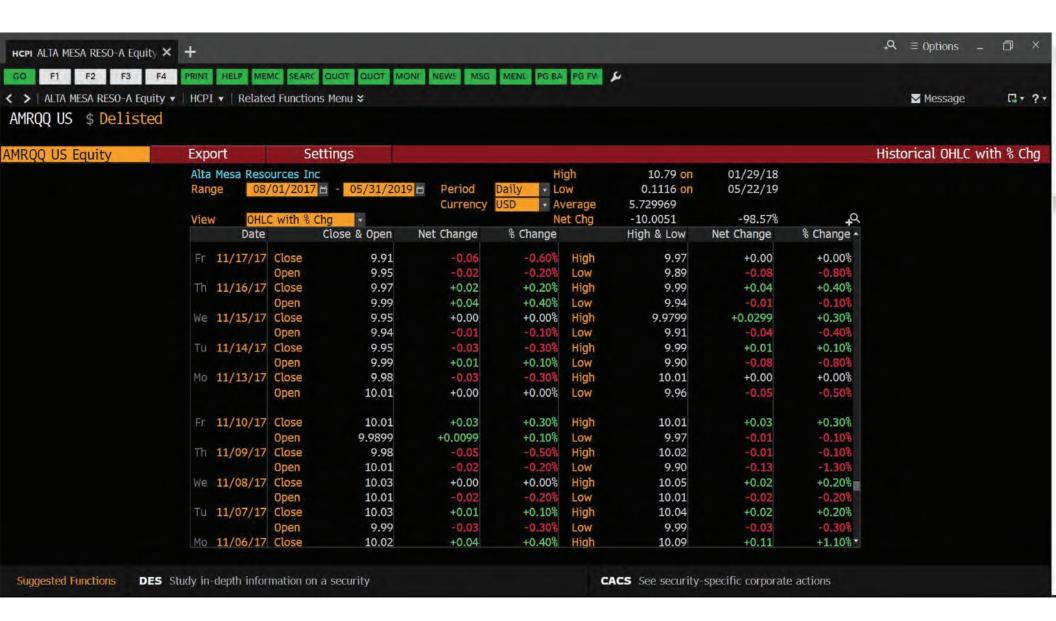




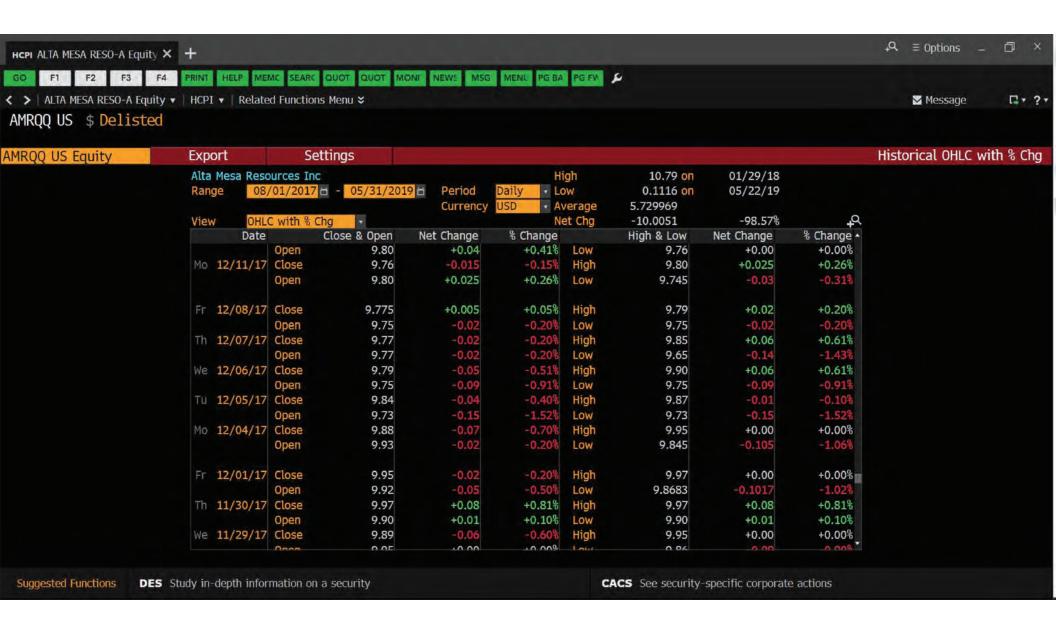


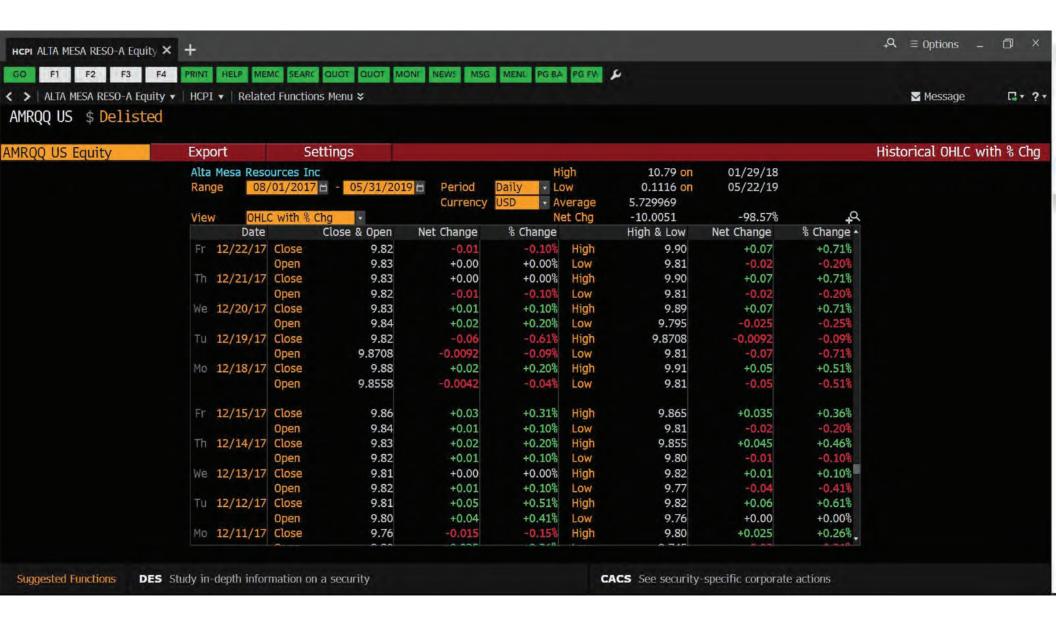


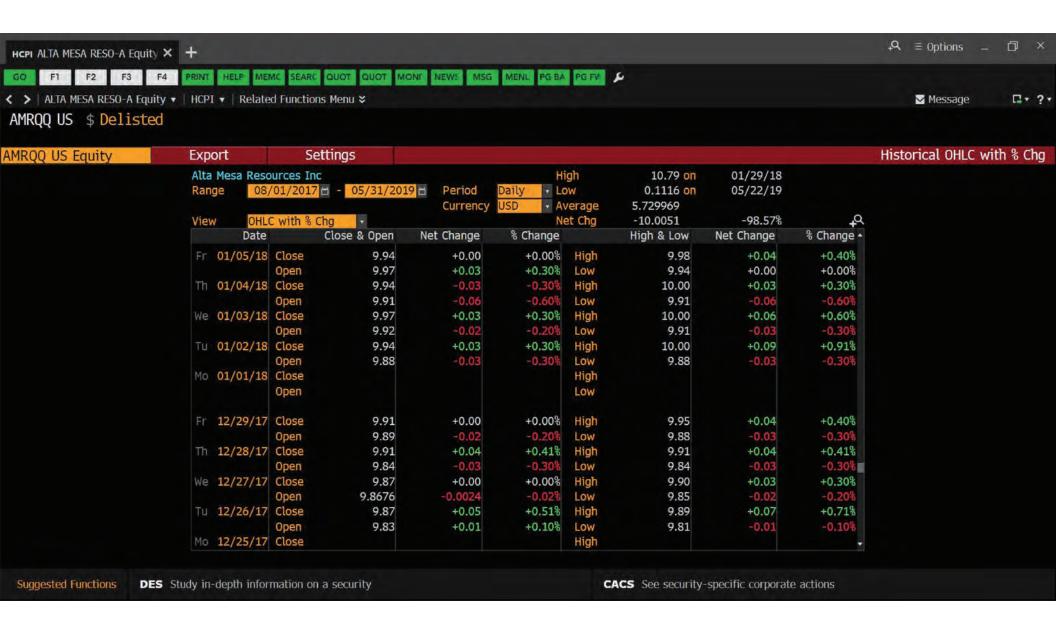


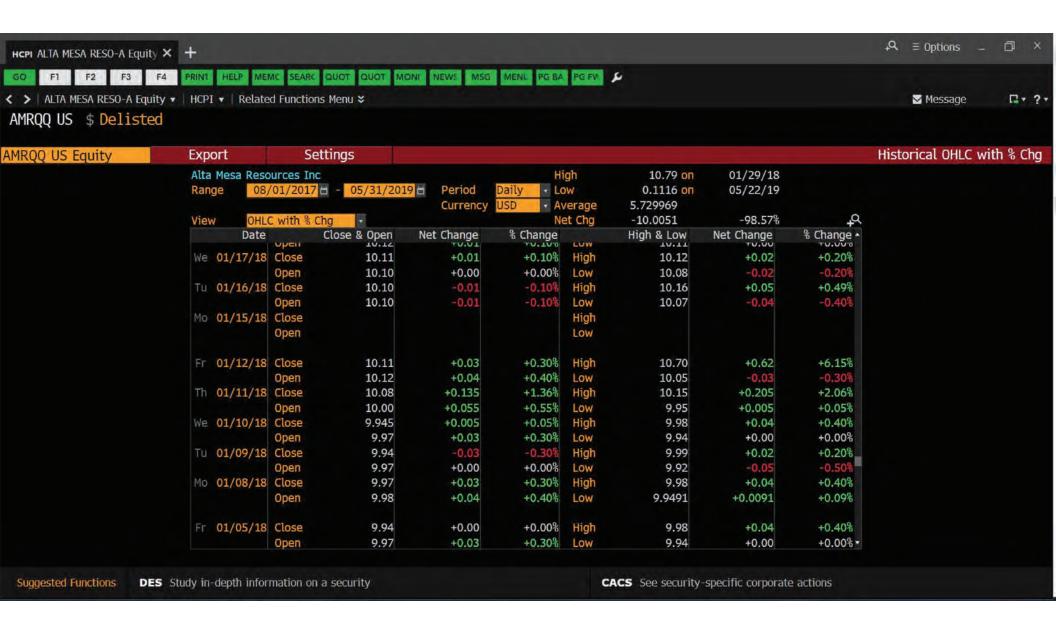


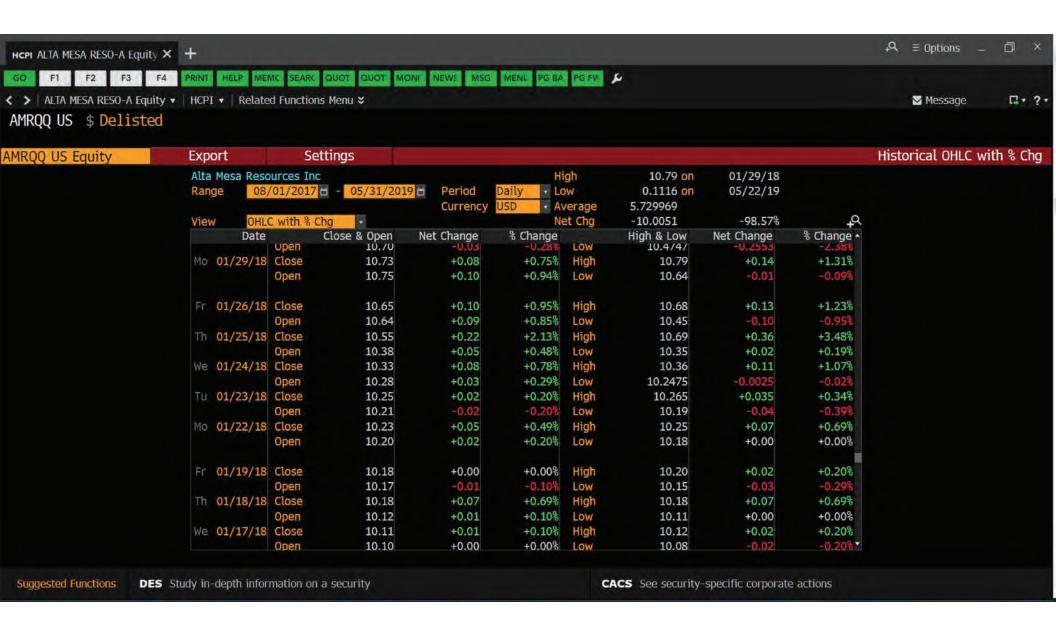


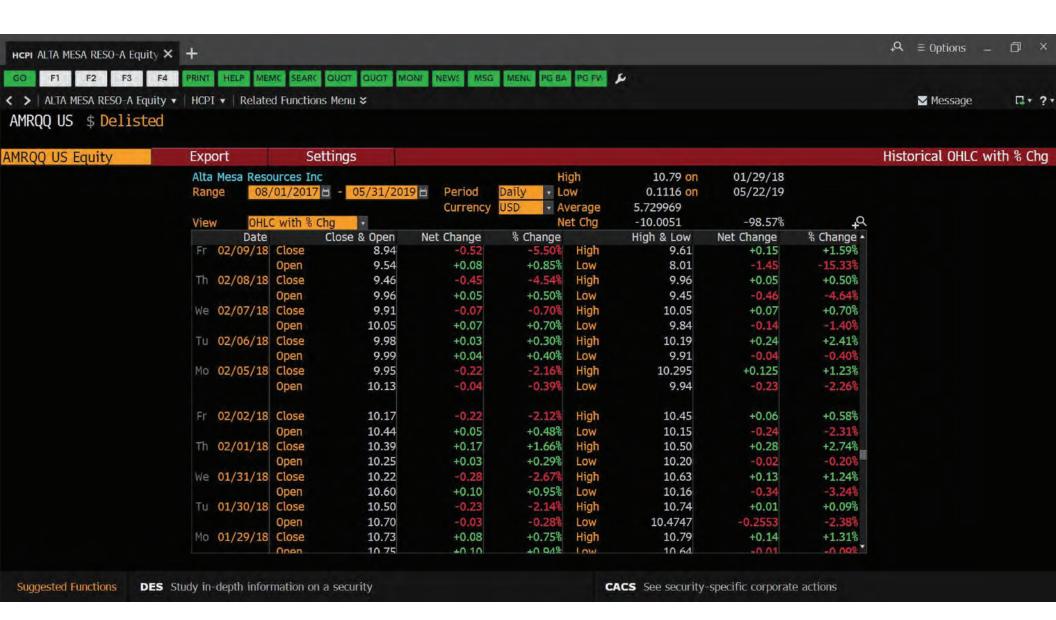


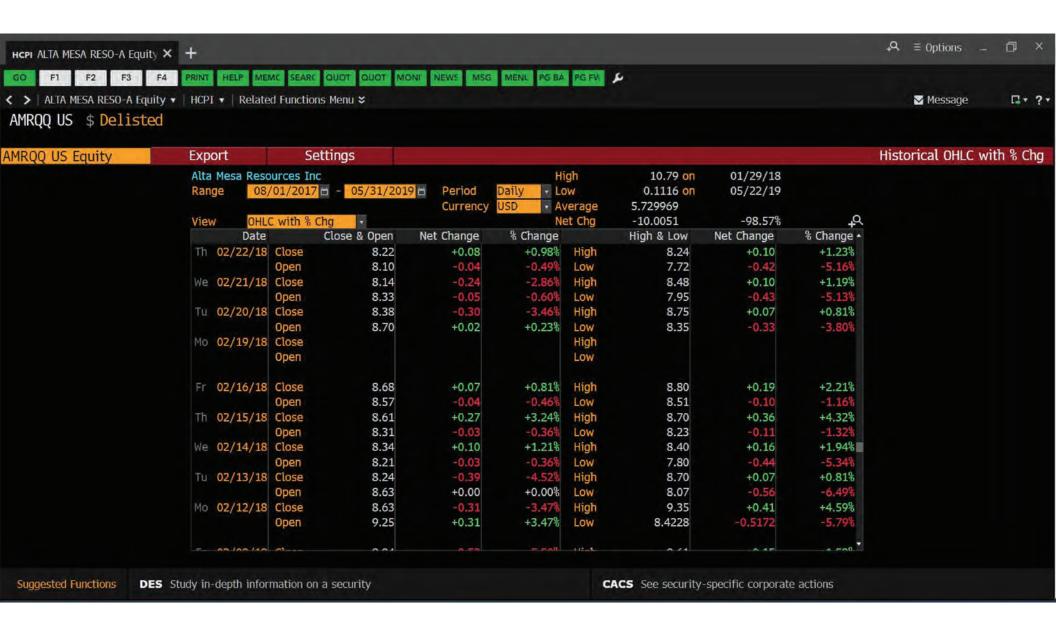


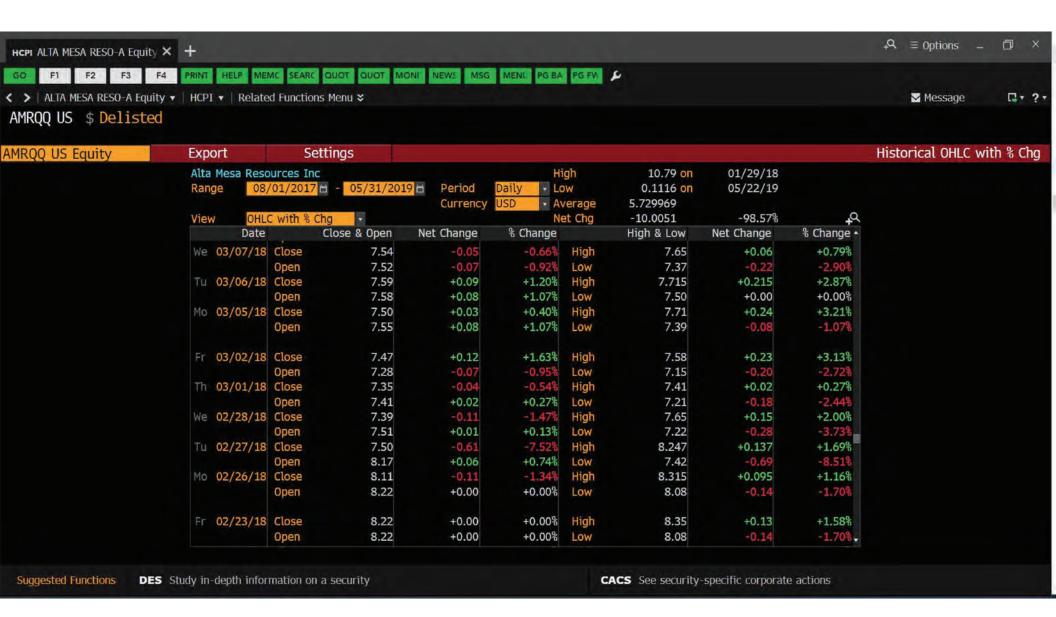


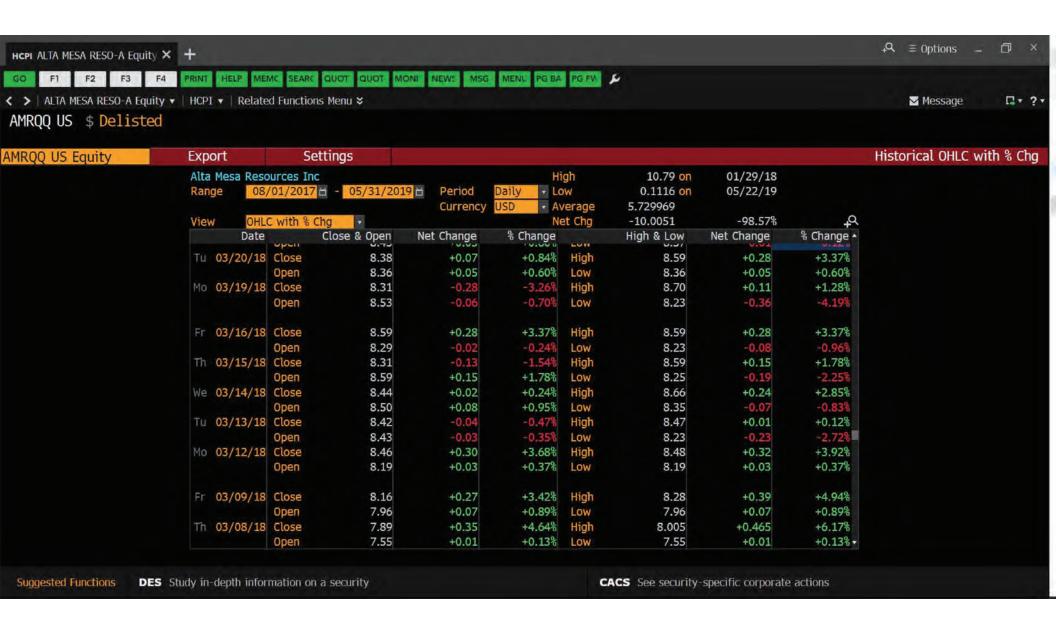


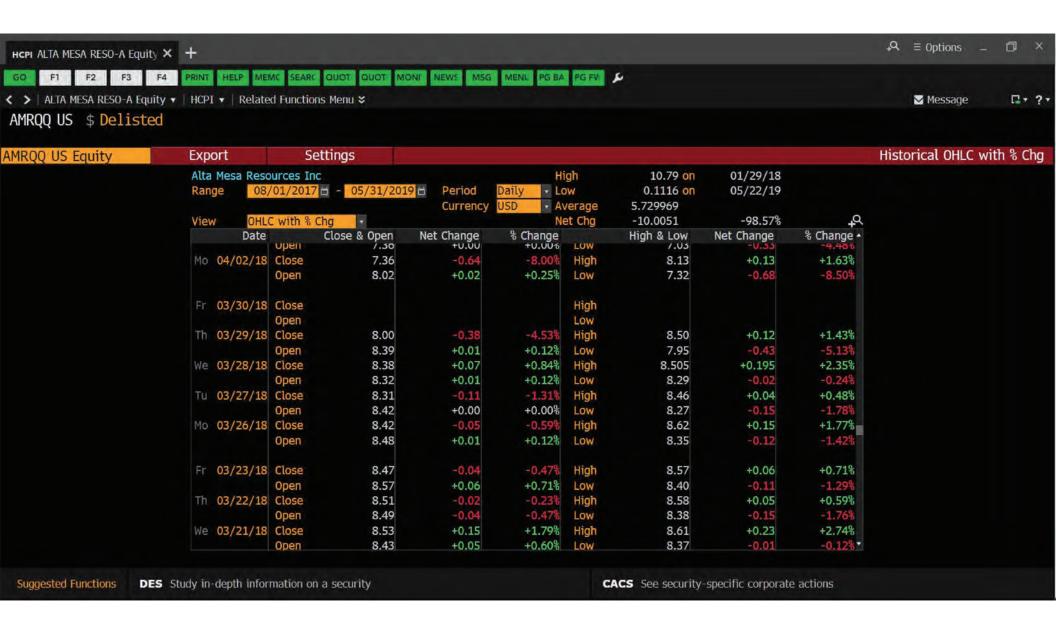


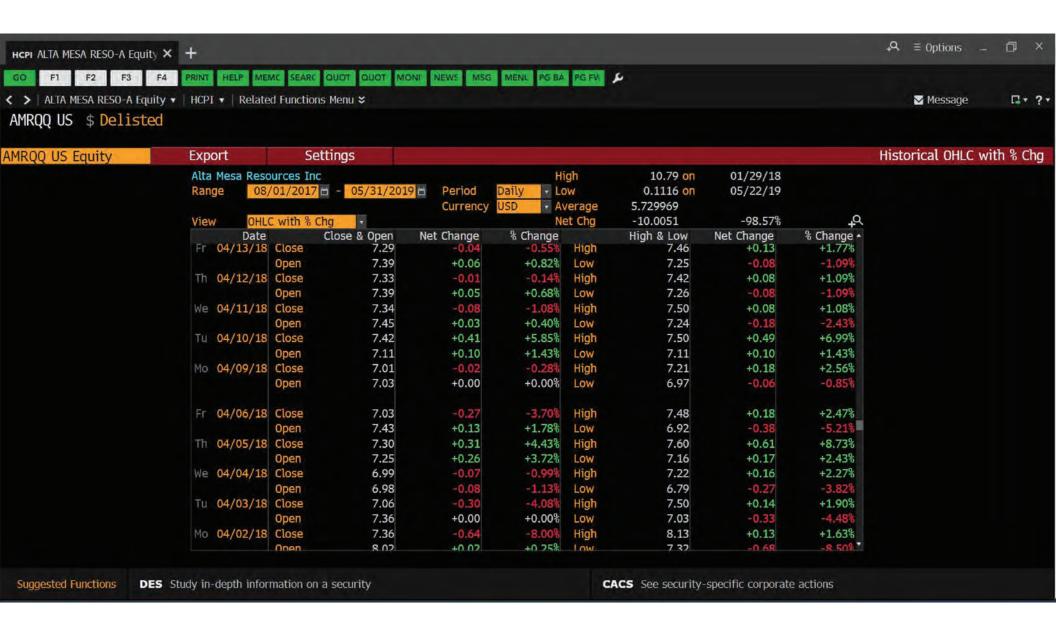


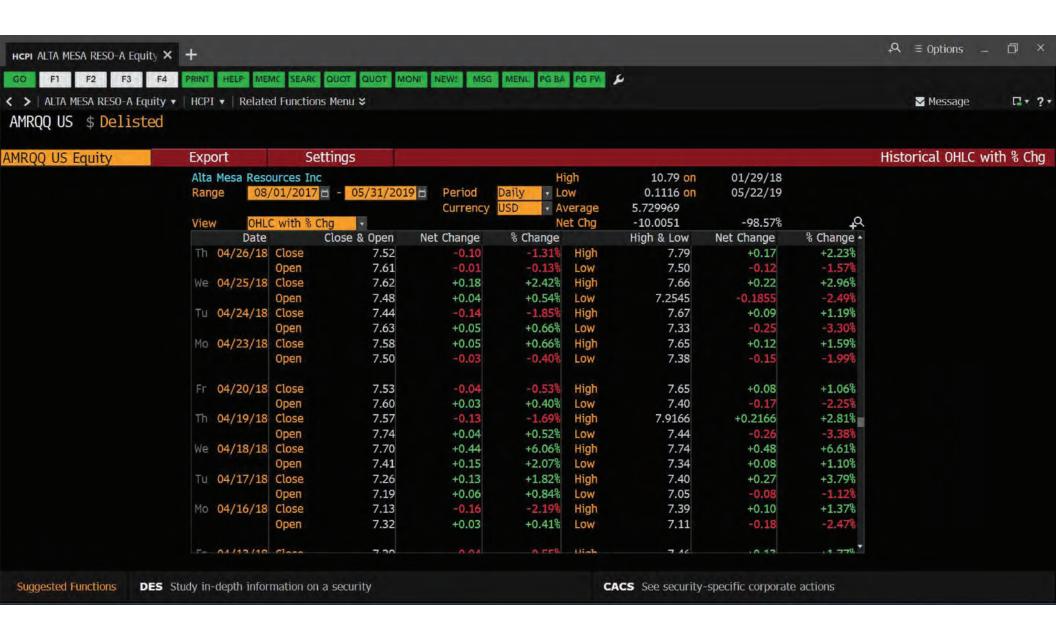


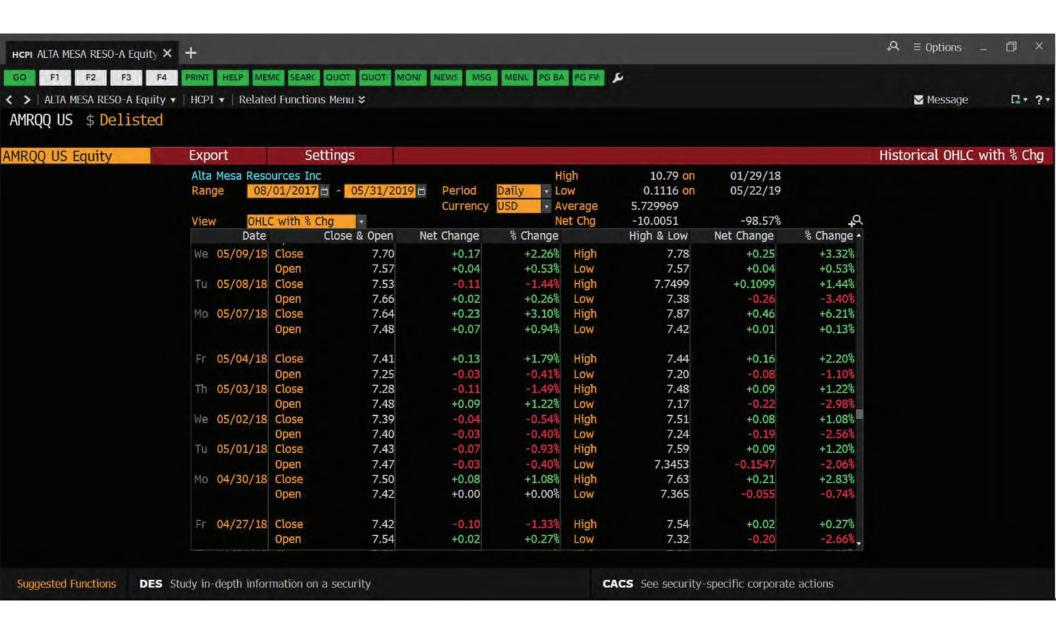


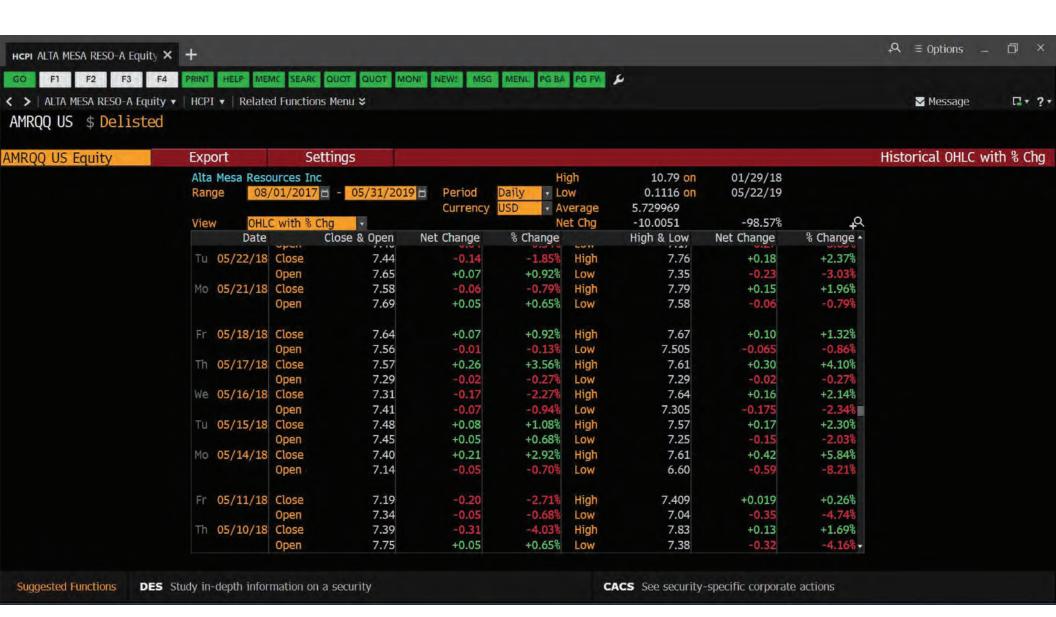


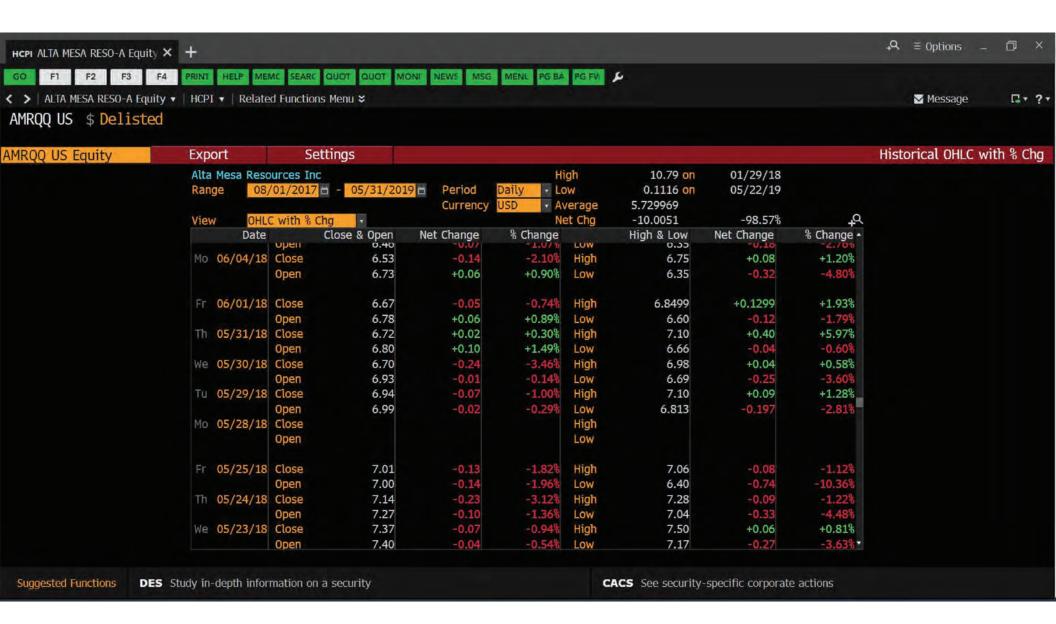


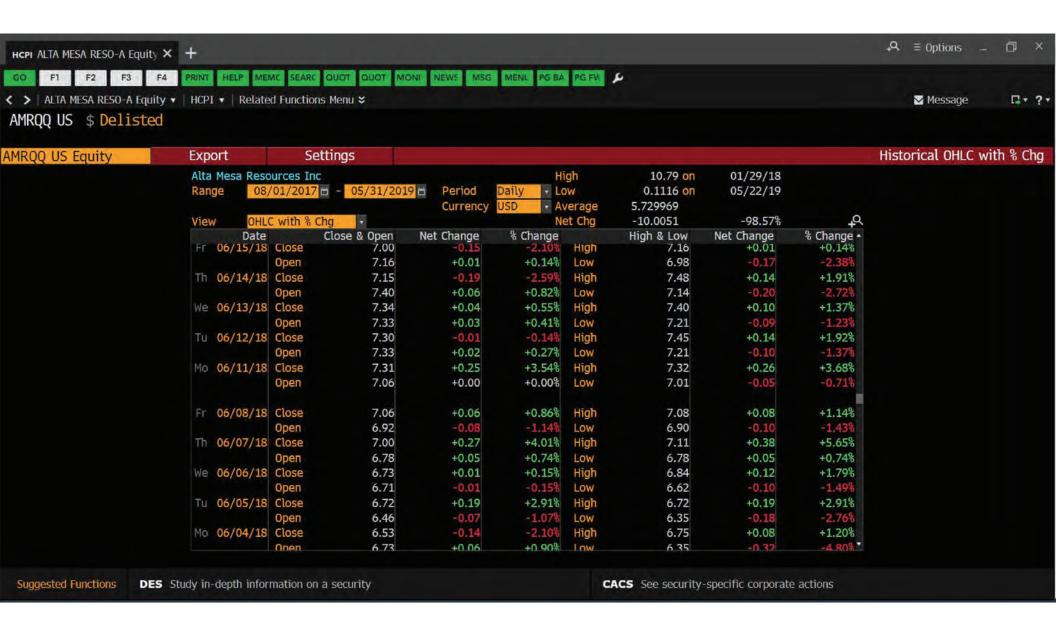


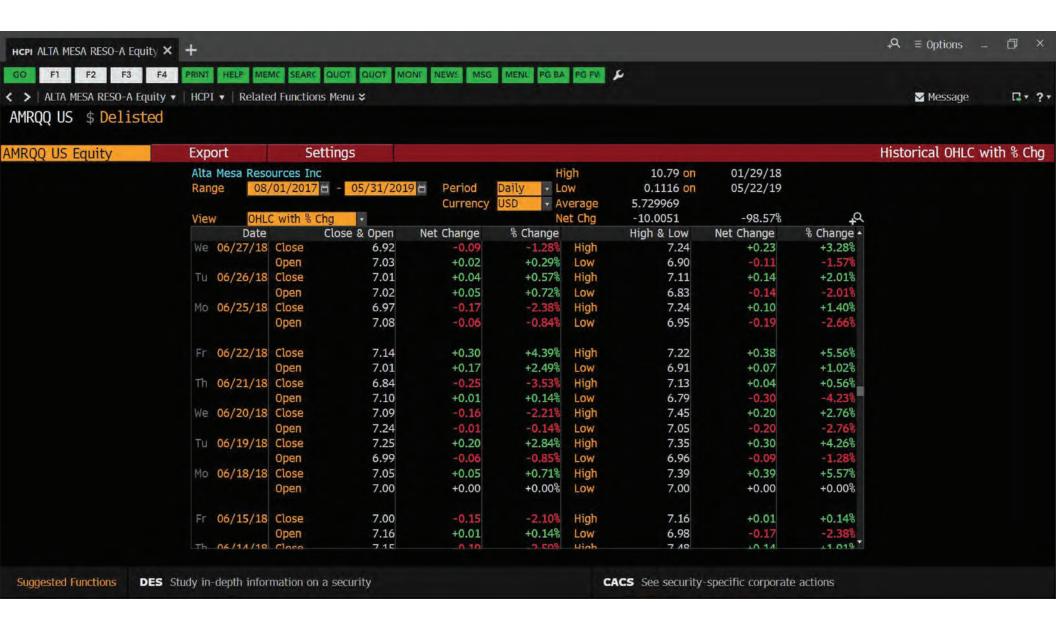


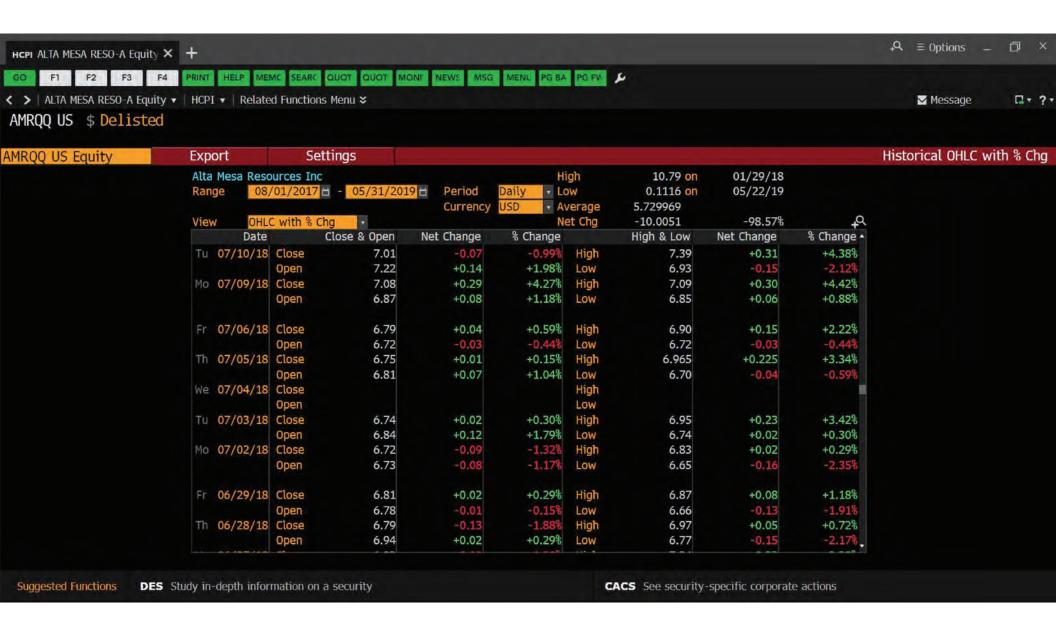


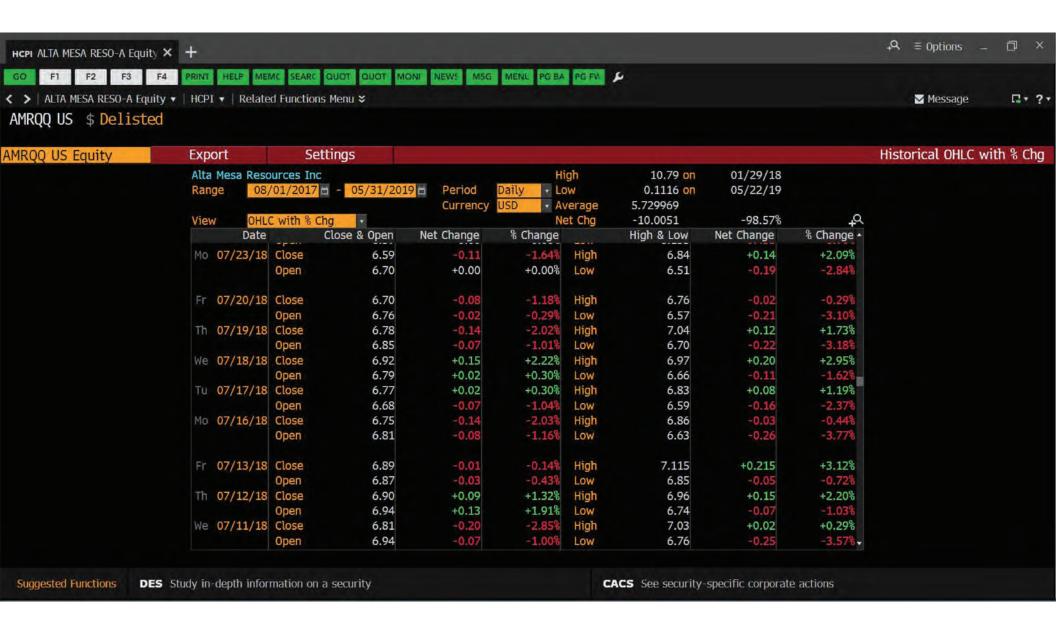


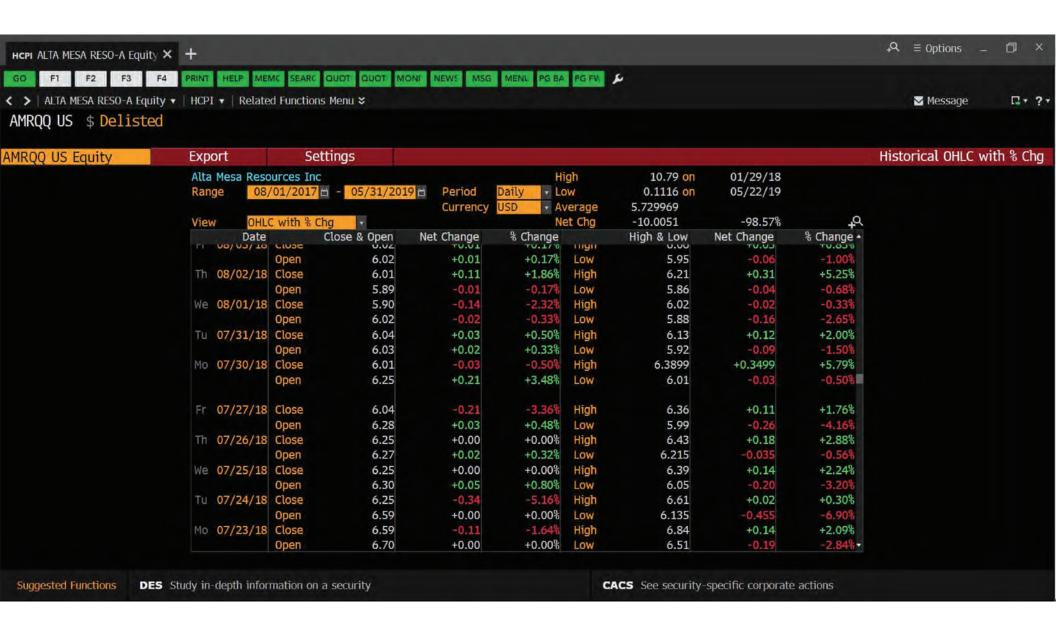


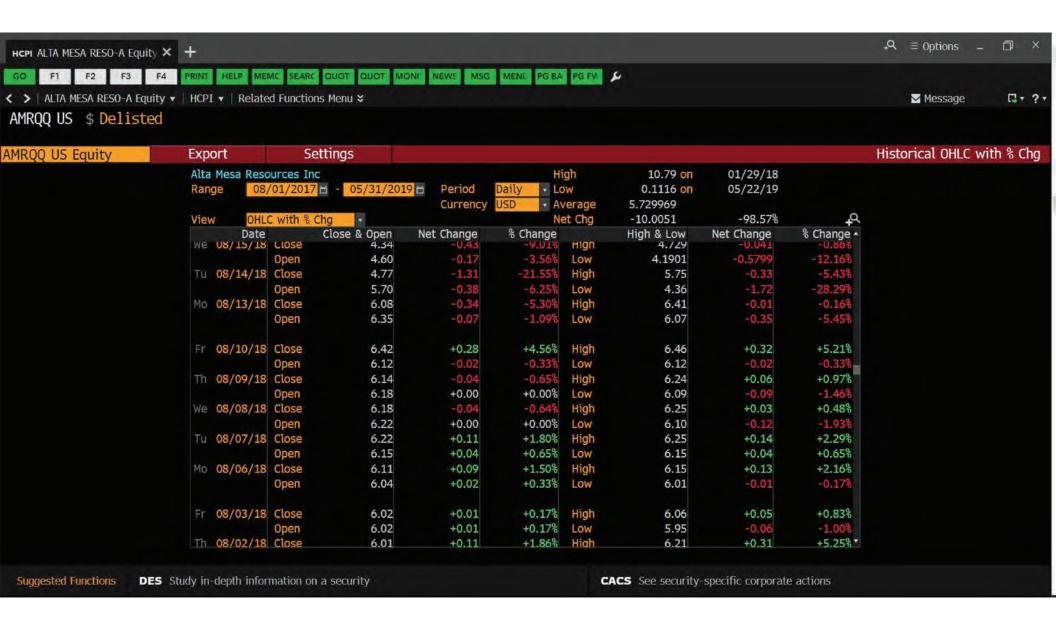


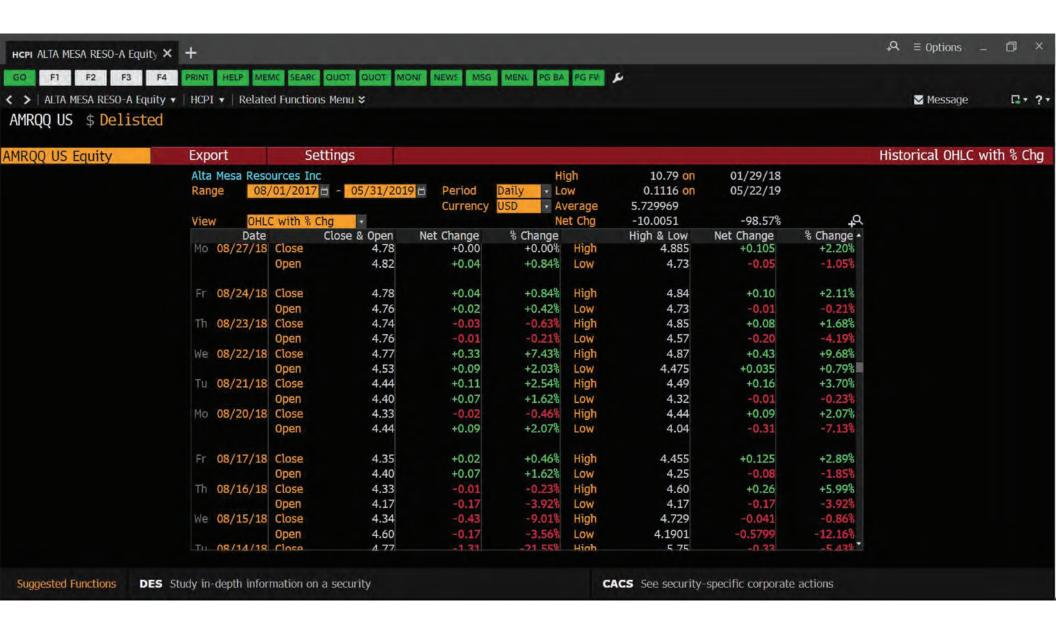


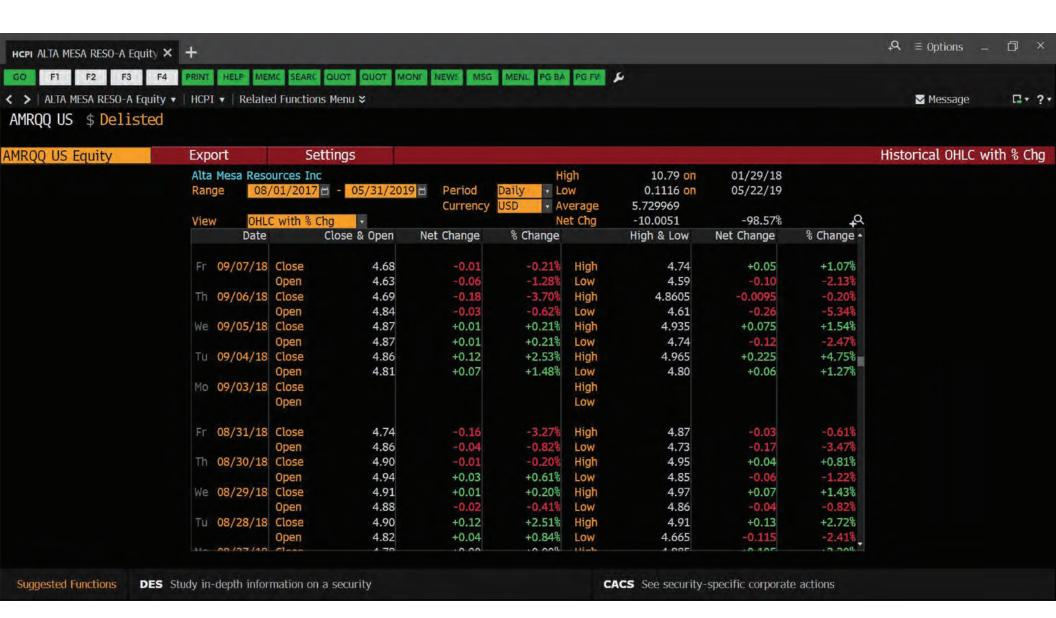


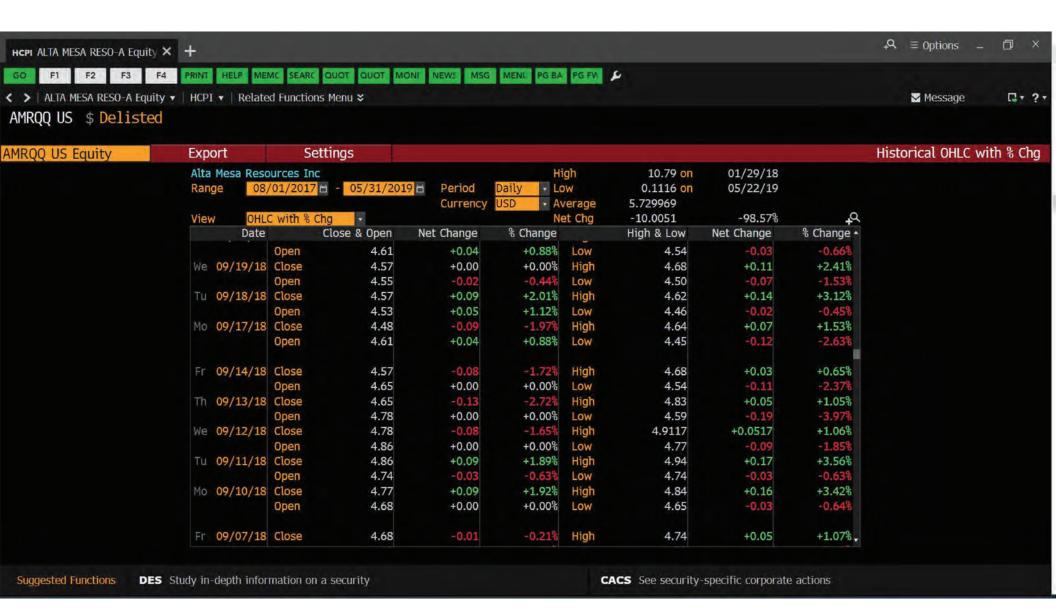


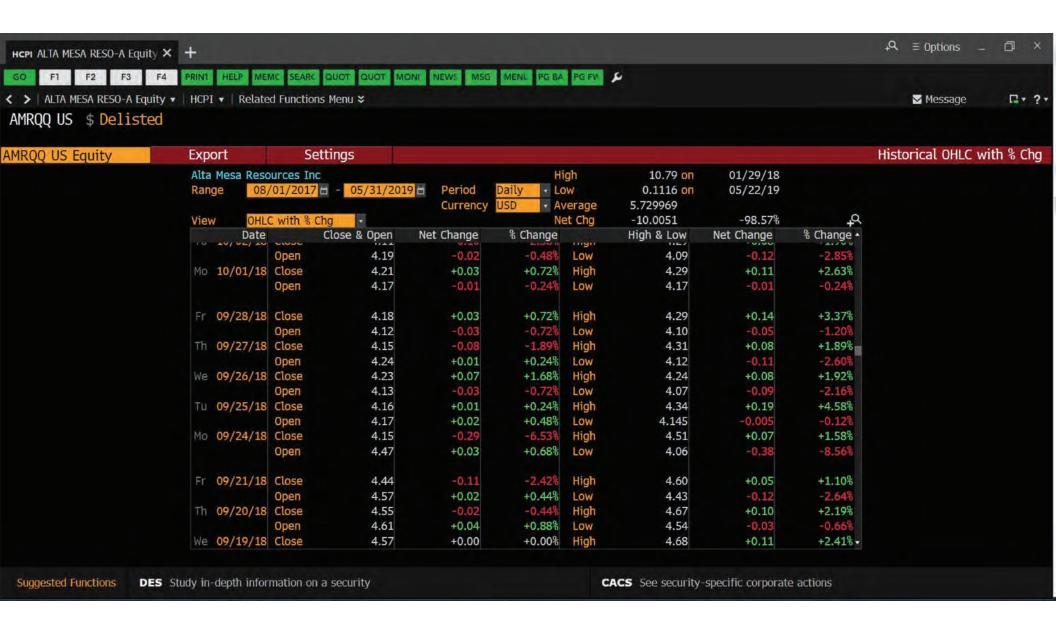


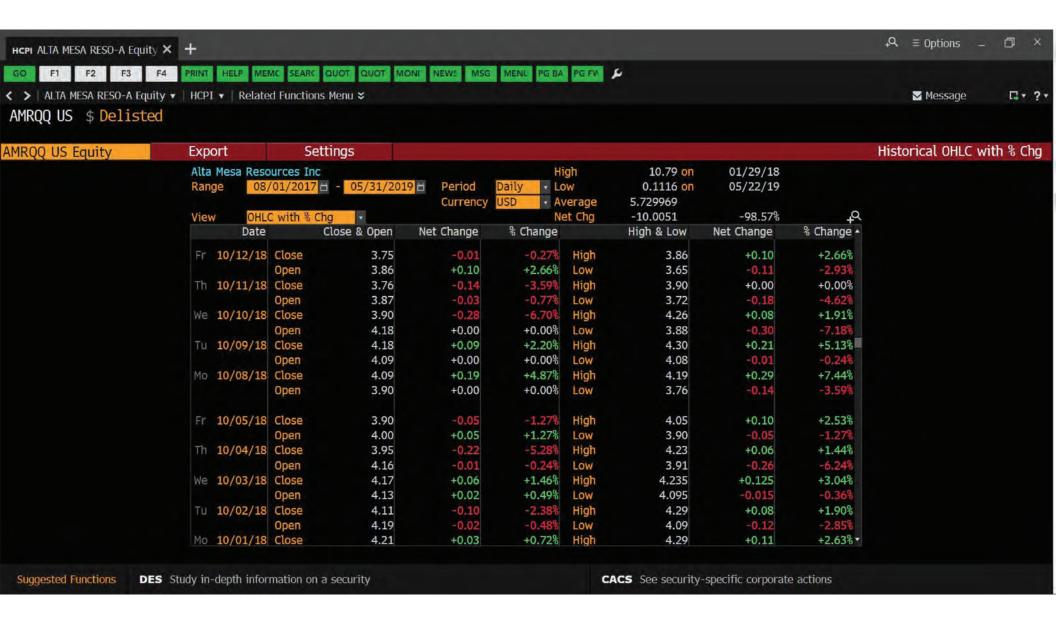


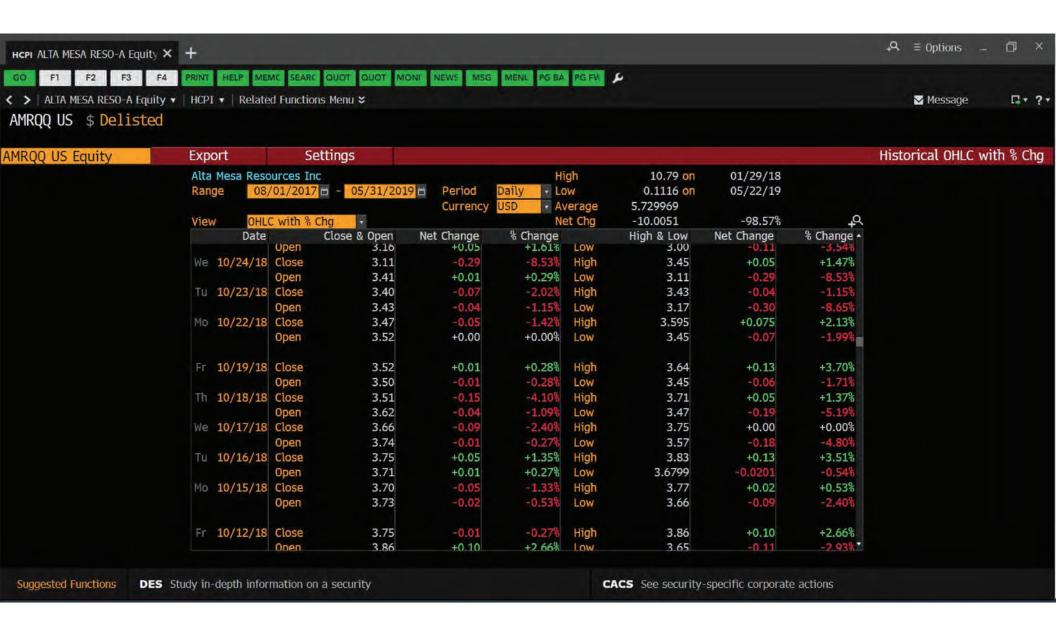


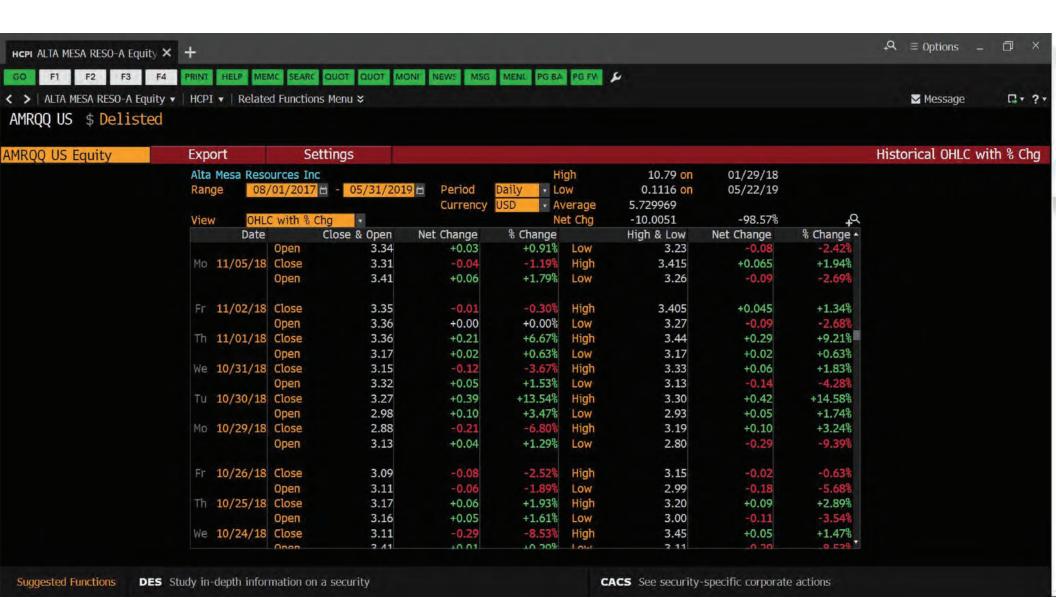


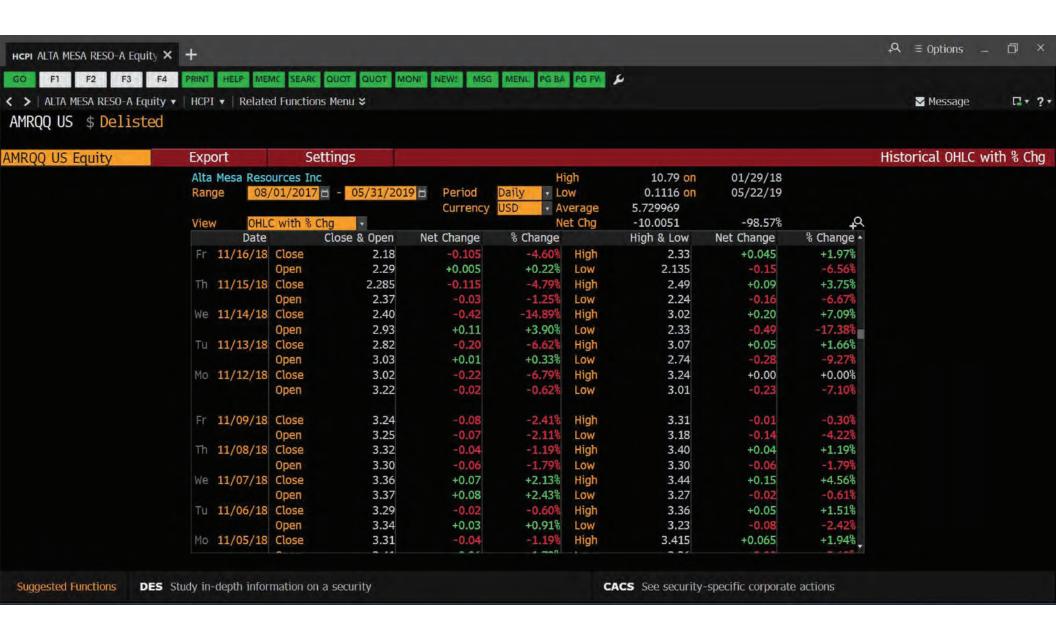


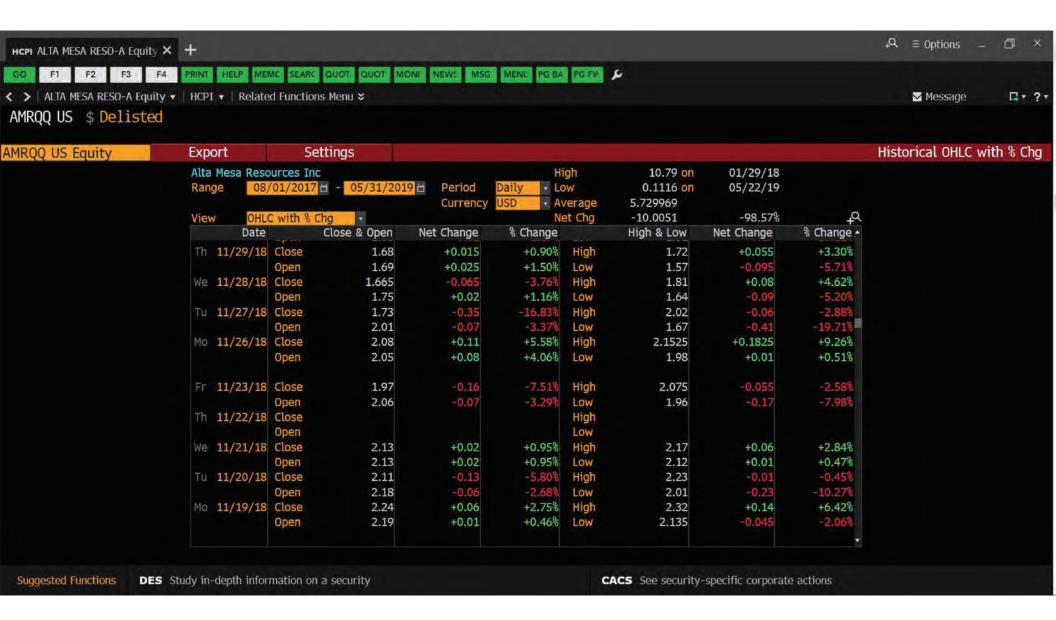




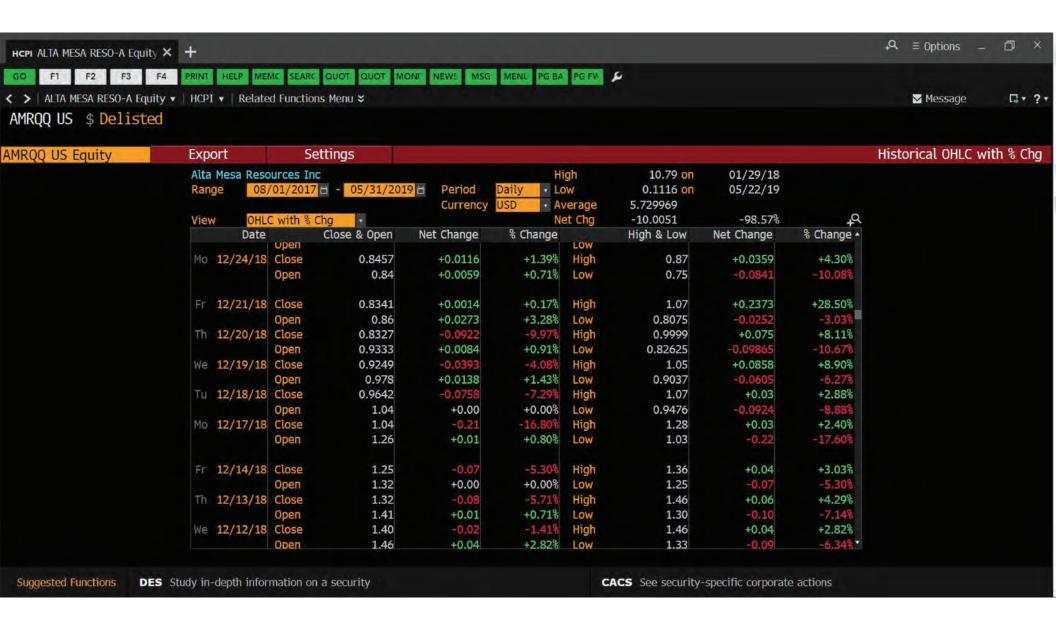




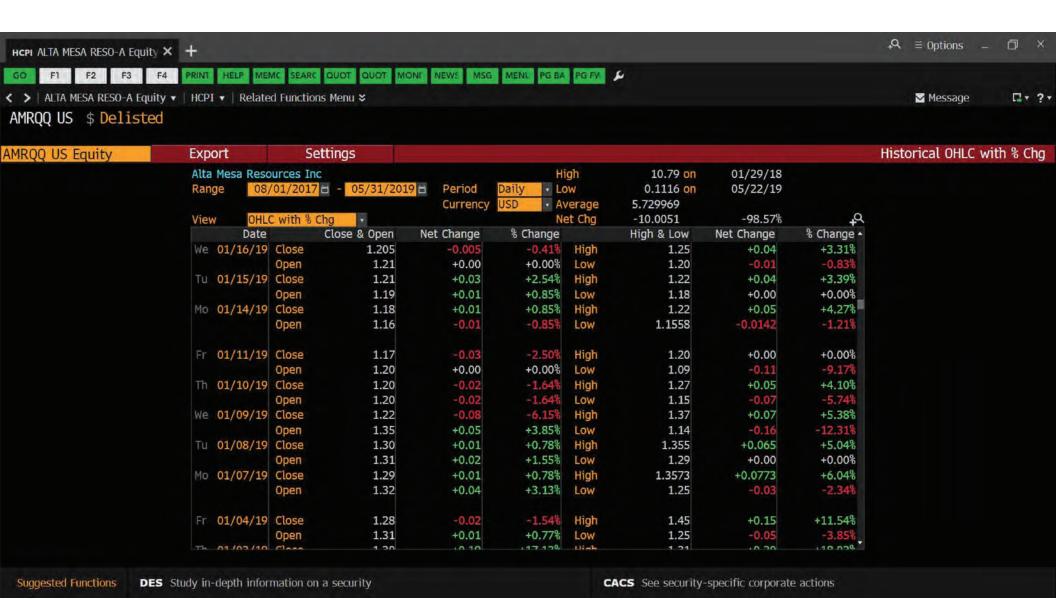


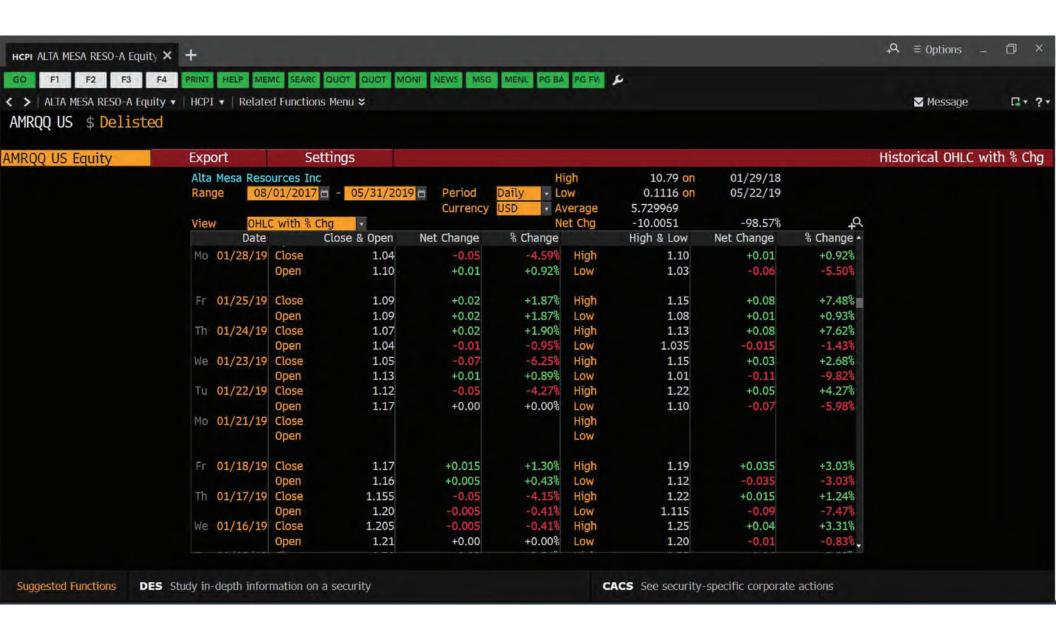


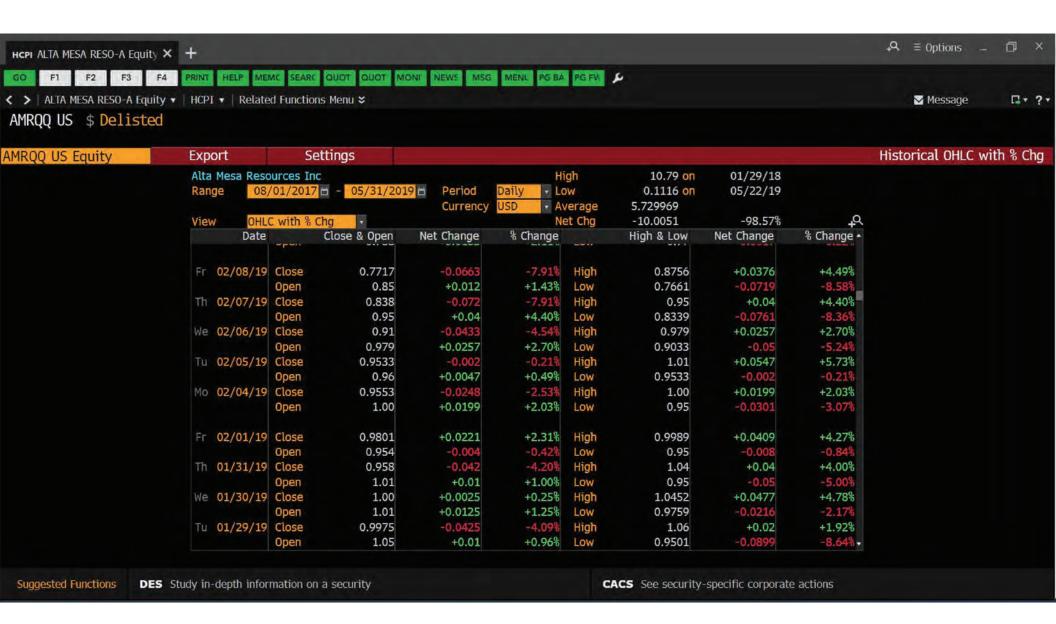


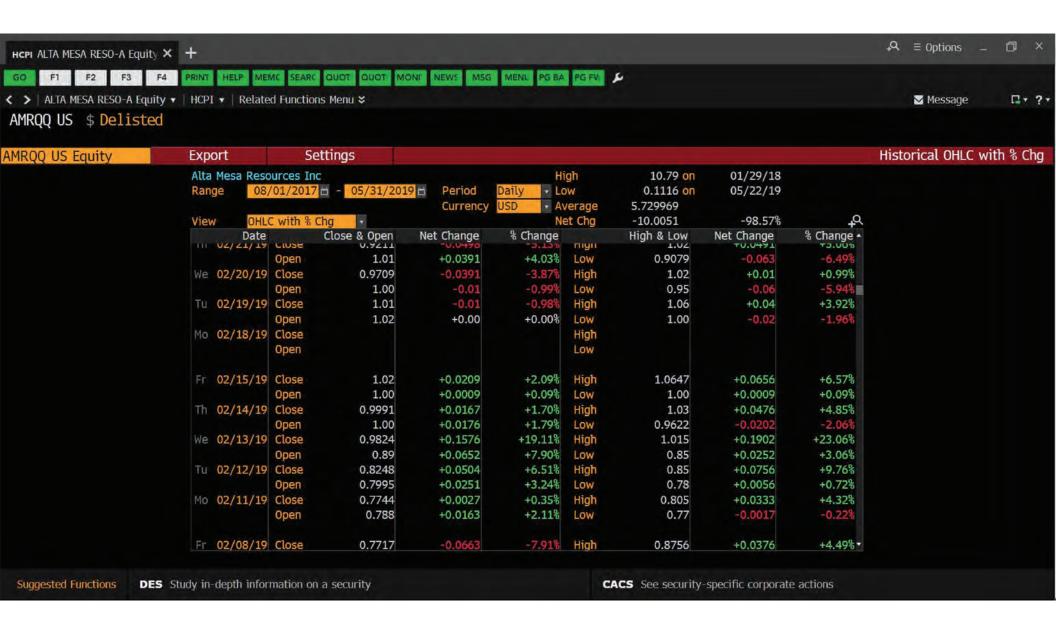


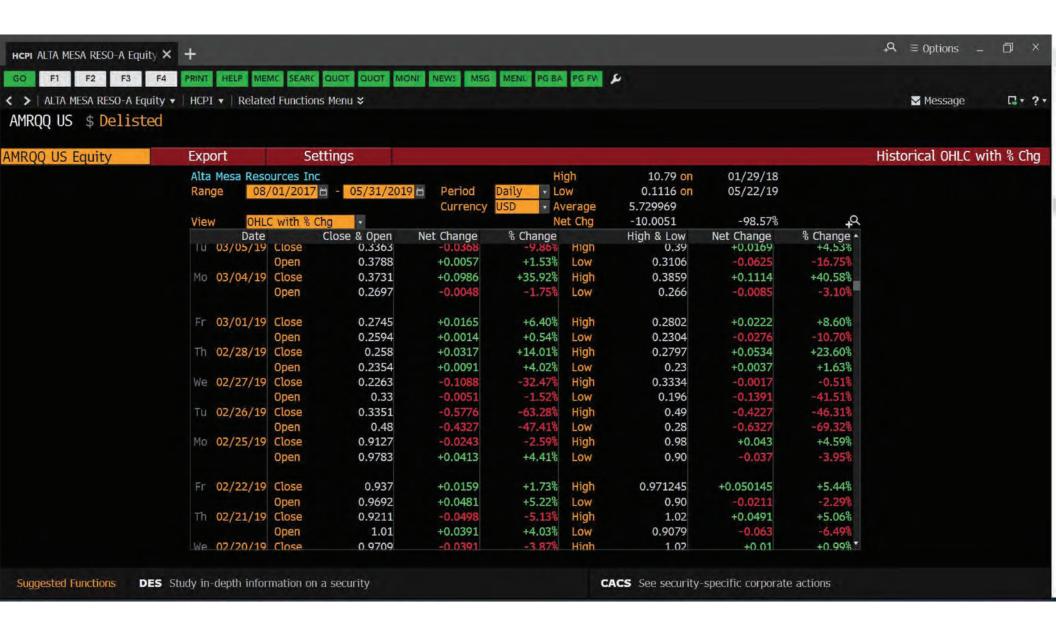


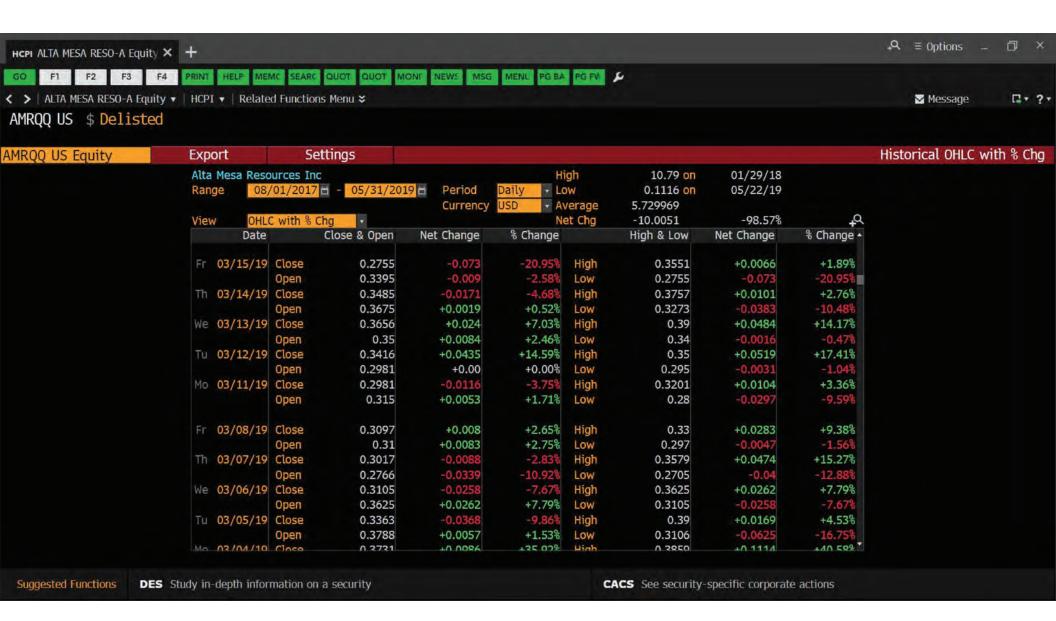


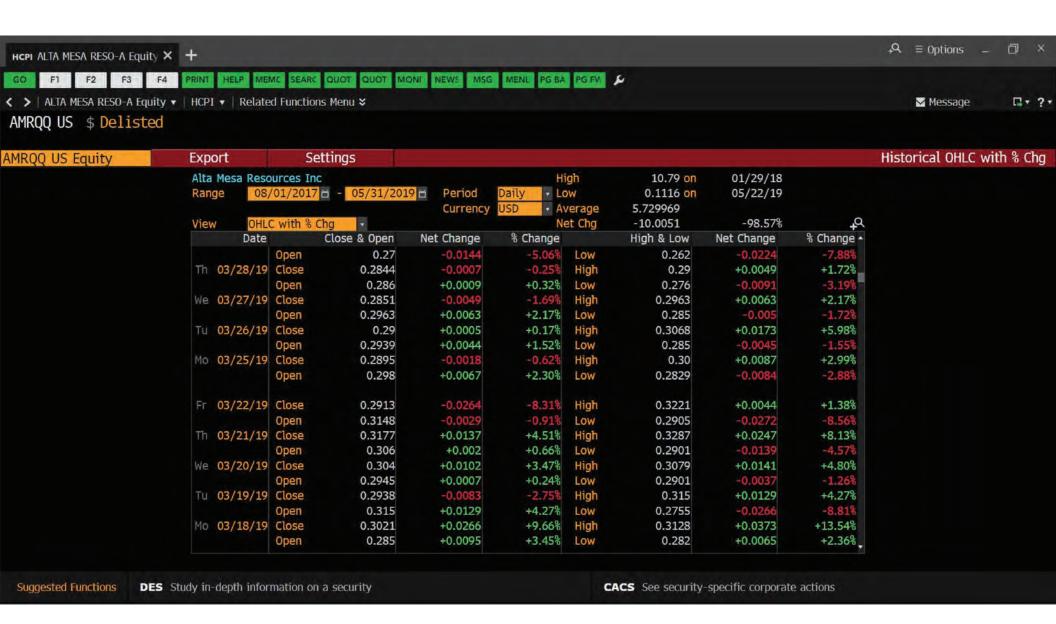


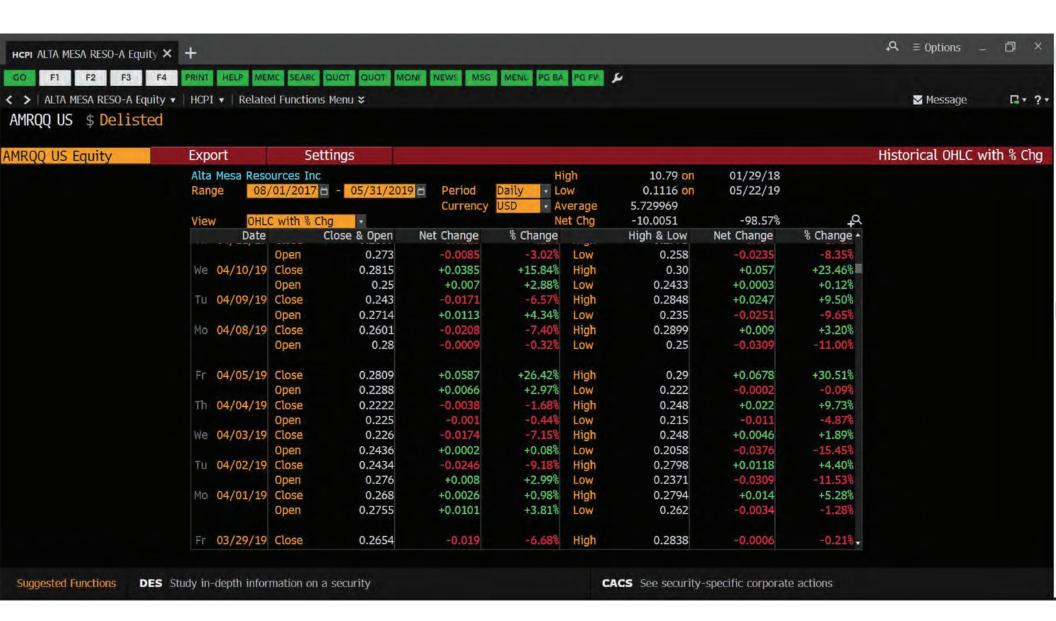


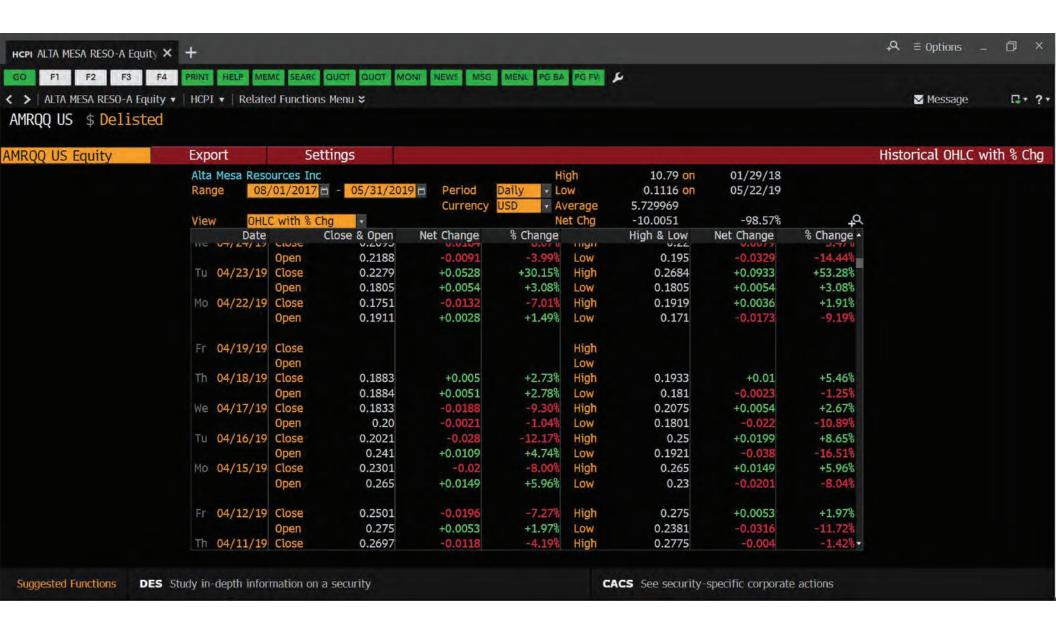


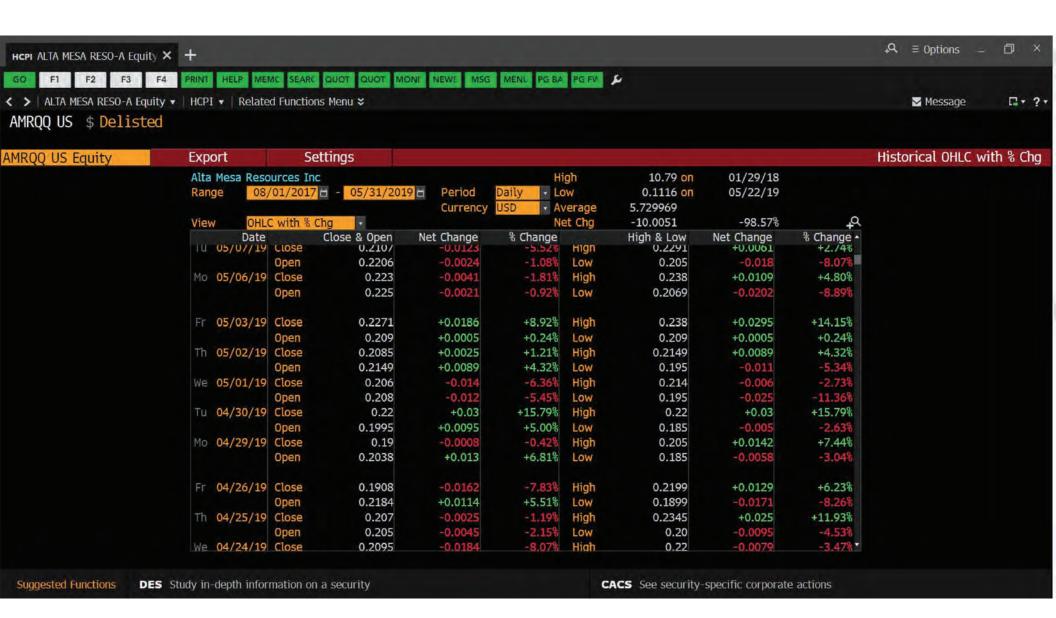


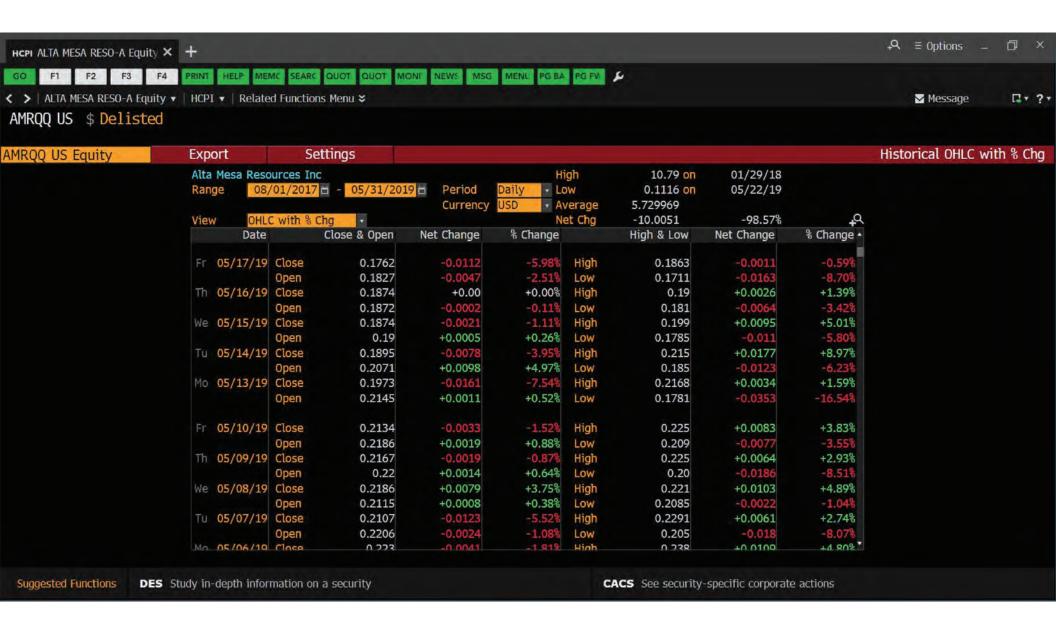


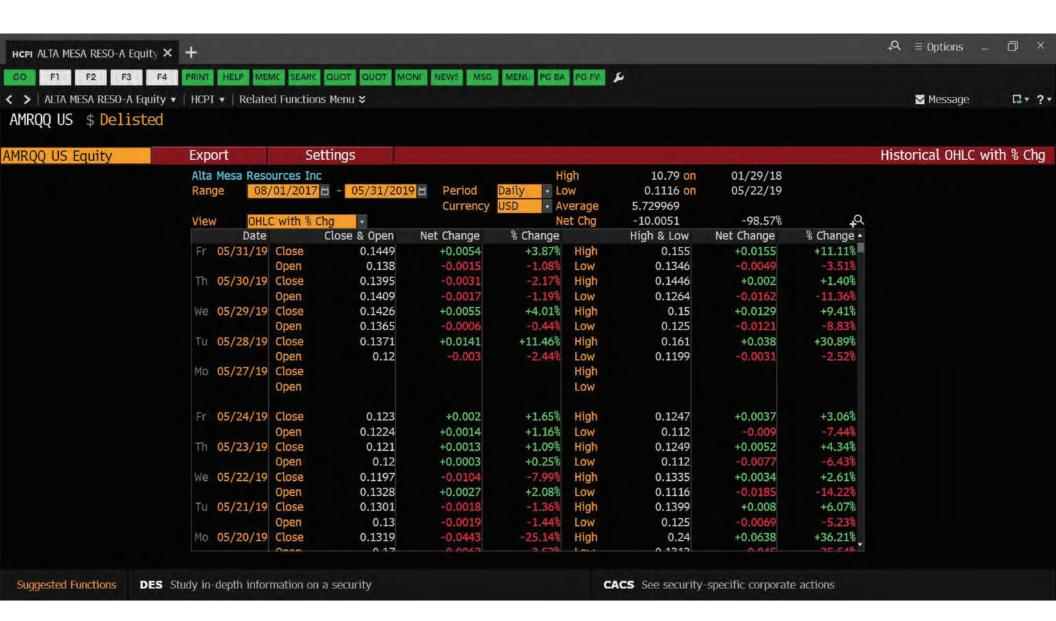












Page 1 1 IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS 2 HOUSTON DIVISION 3 4 IN RE: ALTA MESA S 5 RESOURCES, INC. \$ CASE NO. 4:19-cv-00957 6 SECURITIES LITIGATION S 7 8 ORAL AND VIDEOTAPED 30(b)(6) DEPOSITION OF ARM ENERGY HOLDINGS LLC, 9 through its designated representative, MICHAEL CHRISTOPHER, 10 and MICHAEL CHRISTOPHER, INDIVIDUALLY JUNE 6, 2023 11 (REPORTED REMOTELY) 12 13 ORAL AND VIDEOTAPED 30(b)(6) DEPOSITION OF 14 ARM ENERGY HOLDINGS LLC, through its designated 15 representative MICHAEL CHRISTOPHER, and MICHAEL 16 CHRISTOPHER, INDIVIDUALLY, produced as a witness at the 17 instance of the Plaintiffs and duly sworn, was taken in 18 the above styled and numbered cause on Tuesday, June 6, 19 2023, from 9:09 a.m. to 4:22 p.m., before Kari Behan, 20 CSR, in and for the State of Texas, reported by 21 computerized stenotype machine, viz Zoom, pursuant to 22 the Federal Rules of Civil Procedure and any provisions 23 stated on the record herein. 24 25

Page 27 Are you aware -- I assume you're aware there was a -- there was a 2018 proxy statement in connection with the business combination? Α. Yes. And are -- you're aware that there were projections in that -- in that proxy about Kingfisher's EBITDA for 2017, '18, and '19? Α. Yes. Do you recall whether those -- those EBITDA projections included potential customers or just contracted-for customers? I think they included both. Α. Ο. And whose decision was it to include both? The buyer of Kingfisher was also buying Alta Mesa, and the buyer was -- made that decision, made the decision what -- which -- which wells, third party or Alta Mesa, and at what rate and at what pace. know, they -- they -- they made the call on what projec--- what assumptions should go in those projections. Q. And what -- did they -- did -- did they get those projections from -- where -- where did they get the Kingfisher project- -- projections? MR. POLLET: Object to form. THE WITNESS: That's difficult to say; in

that, when we -- when Kingfisher was going through a

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

Page 28 sale process, we created a sell-side model, you know, 1 sometime in late '17 -- excuse me -- late '16, early 2 3 117. During that process, the buyer of --4 5 Alta Mesa also took an interest in buying Kingfisher, and in so doing, you know, they -- they took the model 6 7 that we created as a sell-side model and they tinkered with it; as is their right, by the way. They're --9 they're the buyer; they can do whatever they want. 10 So to answer your question in a long-winded 11 fashion, the -- the buyer created the pro- -- created 12 the projections based on inputs from various 13 different -- various different sources; I'm sure from 14 the Kingfisher model, from their discussions with 15 Alta Mesa, their own view on the upstream dynamics, et 16 cetera. 17 Alta Mesa, the upstream assets -- we're getting ahead of ourselves, but I just want to get this so -- in 18 19 case I forget to come back to it. 20 The -- the upstream asset, Alta Mesa, the 21 -- the producer, was a customer of Kingfisher, correct? Yes, it was. 22 Α. 23 And when you were creating those models or 24 those projections, did you do due diligence with 25 Alta Mesa as well?

Page 36 1 referring to as portfolio company. 2 Q. Does -- does ARM have investors, in the traditional sense of the word, other than the employees 3 at ARM that are conducting the trading and -- and 4 5 marketing? 6 MR. POLLET: Object to form. 7 THE WITNESS: ARM Energy does not have any investors other than its employees. 8 BY MR. PORTER: 9 10 So it does not have an investment fund that 11 people invest in and get a piece of the profits? 12 MR. POLLET: Object to form. 13 THE WITNESS: No, it does not. 14 BY MR. PORTER: 15 Okay. And in that way, it's different than a private equity fund, for example? 16 17 Α. Correct. 18 When was Kingfisher created relative to your --19 your -- the beginning of your employment at ARM? 20 I believe that we signed the formation 21 documents in the summer of 2015. 22 And you began your employment in May of 2015, 23 as I recall? 24 That's correct. Α. 25 Q. Did you have any specific role in the formation

Page 37 1 of -- of Kingfisher? 2 Α. Yes. Q. And what was that role? 3 The formation of Kingfisher required an LLC 4 5 agreement and a note purchase agreement. The three 6 parties that were coming together to form Kingfisher 7 Midstream were Alta Mesa, or -- and/or its affiliates, Highbridge, which is HPS strategies or investment 8 9 strategies, and ARM Energy and/or its affiliates. 10 So the for- -- the formation of that was 11 the LLC agreement, which I helped negotiate, and the 12 no-purchase agreement, which was the foundational 13 capital from HPS, which I also helped negotiate. 14 Okay. This is an inarticulate question. 15 how did those three entities come together to decide to 16 form Kingfisher? 17 MR. POLLET: Object to form. 18 That predated my employment THE WITNESS: 19 in May of '15. I'm aware there were discussions before 20 May 18th of 2015. 21 BY MR. PORTER: 22 But you're not -- you're not aware of what they were? 23 24 I'm -- I am -- I'm generally aware of Alta Mesa 25 and ARM having a relationship on the hedging or physical

Page 38 marketing side, maybe both. I'm not entirely sure how HPS got involved, other than I'm aware that they had an investment into and/or with Alta Mesa. And you -- did -- did Kingfisher put any cash into the deal, into the formation of -- I'm sorry. Did ARM put any cash into the formation of Kingfisher? Α. No. And how was -- then how was the creation of Kingfisher funded? Entirely by a debt instrument from HPS. Okay. And when it was formed -- this is going to sound like a strange -- what did Kingfisher consist Was it an idea, or did it have physical infrastructure in place? MR. POLLET: Object to form. THE WITNESS: Kingfisher did not have a physical infrastructure in place when it was formed. Ιt had an LLC -- so I quess you would call that in your par- -- your term an idea. It had a note purchase

THE WITNESS: Kingfisher did not have a physical infrastructure in place when it was formed. It had an LLC -- so I guess you would call that in your par- -- your term an idea. It had a note purchase agreement which was the capital, and that was to -- drawn as required for construction and so forth, and a gathering and processing agreement between Kingfisher and Alta Mesa and its affiliates.

BY MR. PORTER:

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

Page 39 1 It had a gathering and processing agreement 2 with -- with Alta Mesa and its affiliates. On the -what -- strike that. 3 Did you hold any -- any role -- at 4 5 Kingfisher from -- from the date of its creation to the 6 business termination? 7 Α. That's -- that's a peculiar question. Kingfisher had a management services 8 9 agreement with Asset Risk Management, LLC. Asset Risk 10 Management, LLC, had employees. Those employees had 11 roles to operate, manage, et cetera, Kingfisher. 12 Kingfisher itself, though, had a six-member board, if I 13 recall, two from each party; two from Alta Mesa, two from HPS, two from ARM. 14 15 But Kingfisher otherwise didn't have employees? 16 Kingfisher did not have employees. Okay. And -- and if I -- and if I understood 17 you, Kingfisher was operated by ARM under an agreement 18 19 with the other parties? 20 Kingfisher was operated by Asset Risk 21 Management, LLC, under an agreement with Kingfisher 22 itself. 23 In addition to the ARM entity owning a Q. Okay. 24 portion of Kingfisher?

Α.

That's correct.

Page 58

Q. Okay. How about Garrett Mecke. And I don't know if I'm pronouncing it correctly.

Who is Garrett Mecke?

- A. You did pronounce it correctly. Garrett was an analyst that worked for Cody in a support role. You know, Garrett's job was to assist Cody and his team with some of the spreadsheets and presentations related with performing the services I described.
- Q. And when you say "spreadsheets," what -- what do you mean? Spreadsheets containing what?
- A. Shoot, I -- that's a good question. I'm -- Garrett would do gas analyses. He would track well connects. I'm sure he tracked miles of pipe, vendor payment, et cetera.
 - Q. And did he have -- was his -- strike that.
 - Who was Mr. -- who's Mr. -- who's Zach Lee?
 - A. Zach Lee is the CEO of ARM Energy.
 - Q. And was he -- is he a cofounder as well?
 - A. That's correct. He's a cofounder as well.
- Q. What role, if any, did Mr. Lee have in ARM's Kingfisher investment?
- A. Zach was involved in some of the business-development activities for Kingfisher certainly as it related to Alta Mesa and relationship management with Alta Mesa. Zach was also a board member for ARM's

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

Page 59 1 position at Kingfisher. 2 How about Mr. Tipton; it says: AEM, Okay. 3 President. Who was Mr. Tipton? Taylor Tipton was the president of ARM Energy 4 5 Management and ARM Midstream. And what role, if any, did Mr. Tipton have in 6 7 operating Kingfisher? A lot of the people we just described, so Cody, 8 9 engineering and operations, and the development team 10 would roll up under Taylor's supervision. So Taylor wore several hats at Kingfisher. He was kind of making 11 12 the trains run on time for construction, for operations, 13 business development and, you know, he had a lot -- he 14 had board management roles as well. He wasn't on the 15 board, but he certainly reported to the board. Q. Which of -- on this org chart, when -- when ARM 16 17 created projections for Kingfisher, what -- what -- what area of this org chart did -- did that fall? 18 19 Object to form. MR. POLLET: 20 THE WITNESS: Hmm. Quite a few of them, 21 Mr. Porter. That would include elements of operations; 22 that would include elements of business development, 23 elements of engineering, elements from the board, 24 elements from the CFO's office -- that's me, by the way. 25 When creating projections, a lot of different hands go

Page 64 Okay. 1 Α. I'm there now. Under Kingfisher Midstream, LLC, it says: 2 Kingfisher is a Delaware limited liability company 3 formed on January 30th, 2015, by ARM Midstream, LLC, 4 5 affiliates of HPS and HMS Kingfisher Holdco, LLC, for 6 the purpose of acquiring, developing and operating 7 midstream oil and gas assets. 8 Do you see that? 9 Α. Yes. 10 Q. When did you -- what is HMS Kingfisher Holdco, 11 LLC? 12 I think HMS refers to High Mesa something or 13 the other, the asset is in something or -- services or 14 something, but -- that's an affiliate of Alta Mesa. 15 Q. And, once again, ARM had no ownership interest 16 in high -- in the High Mesa entities? 17 Α. No, we did not. 18 And is that sentence I just read an accurate 19 description of Kingfisher? 20 MR. POLLET: Object to form. 21 THE WITNESS: I believe so. 22 BY MR. PORTER: 23 And then it goes on to say: Kingfisher 24 primarily focuses on providing crude -- crude oil 25 gathering, gas gathering and processing and marketing to

Page 135 1 Α. Yes. And it's fair to say this was Mr. Lee's 2 3 response to Mr. McMullen's criticisms? 4 MR. POLLET: Object to form. 5 THE WITNESS: I think it is his response to Mr. McMullen's criticism. 6 7 BY MR. PORTER: Q. And does this re- -- refresh your recollection 9 that Mr. McMullen was criticizing the -- the ask by -by KFM? 10 11 MR. POLLET: Object to form. 12 THE WITNESS: Honestly, I don't remember 13 hearing that -- I don't remember this that well. 14 don't -- McMullen, I don't think he was really 15 criticizing or not. I think he was just inquiring. I 16 don't -- this is not -- I -- I don't view this as all 17 that -- all that much friction. 18 BY MR. PORTER: 19 I'm not sugg- -- suggesting it is. I'm Okay. 20 just trying to understand. 21 And was Bayou City a -- an owner of KFM? 22 Α. No. It wasn't? Okay. 23 Q. 24 Α. No. 25 Finally, on this document at the top, it says, Q.

Page 136

in -- and there's an e-mail from Jeff Hostettler at HPS Partners, and it says: As a shareholder of HMI -- High Mesa -- and not KFM, BCE has no vote with respect to actions of KFM. Taken one step further, KFM can take nearly all actions without the vote of HMI through the direction of HPS and ARM.

Do you see that?

A. Yes.

- Q. Would you agree with the characterization that "KFM can take nearly all actions without the vote of HMI through the direction of HPS and ARM"?
 - A. Yes, I would.
- Q. Okay. What -- was there a limit on HPS's -- HPS's say over an important Kingfisher decision?
 - A. Repeat that one more time, please.
- Q. Was -- was there a limitation on HPS's say over important Kingfisher's decisions?

MR. POLLET: Object to form.

approval thresholds were. I do know this: They're the capital. So if something required capital, they could refuse to fund, or they could just block it. So they -- you know, they did have a -- I don't know if they had a perfectly controlling interest in terms of what would -- on the board, but they had a fairly influential interest

Page 137 1 because they had, you know, almost all the investment capital into the business. 2 BY MR. PORTER: 3 4 So they had -- you would say they had de facto 5 control over Kingfisher through financing? 6 MR. POLLET: Object to form. 7 THE WITNESS: I think that they had 8 significant control over KFM because of the financing. BY MR. PORTER: 9 10 Q. Okay. And -- and did -- did ARM -- was ARM 11 required to go to -- to HPS for -- for important 12 decisions, or did -- was -- let me -- let me just stop 13 there. 14 Was ARM required to go to HPS for important 15 decisions regarding KFM? 16 MR. POLLET: Object to form. 17 THE WITNESS: Yes. 18 BY MR. PORTER: 19 And -- and was that by agreement, or was that 20 by virtue of the -- of the funding aspect of this? 21 I don't remember if it's a virtue of our LLC 22 agreement that we had to go to them with all our 23 decisions, but it's also appropriate partner management if they're writing, you know, 99 percent of the checks, 24 25 then that's -- it's prudent to be considerate of their

Page 223 1 MR. POLLET: Object to form. 2 THE WITNESS: It's -- it's -- you're 3 misunderstanding what's going on. BY MR. PORTER: 4 5 Q. Okay. We met with Mr. McClure, and we -- and he asked 6 7 for help with his assumptions putting them into a model, because he lacked the resources to do it, so we 8 volunteered Garrett to help him. Garrett ran the inputs 9 10 that Mr. McClure, and we, frankly, you know, advised on, 11 so if there was something that McClure didn't know, then 12 we would help him get an answer. And you see 13 this further in this e-mail about certain rigs from certain producers only from information we were getting. 14 15 So we were not developing independent 16 projections; we were receiving input from Alta Mesa's 17 personnel so that we could assist them politely and 18 kindly with projections that they -- that they, 19 unfortunately, lacked the analytical resources. 20 Okay. Do you see the top e-mail on this chain, 21 it was on March 26 of 2018, two days before the fourth 22 quarter reporting? 23 Do you see that? 24 Α. I do. 25 Do you know whether the projections that you Q.